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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

ROBERT "BOB" BURNS – Chairman  
BOYD DUNN  
SANDRA D. KENNEDY  
JUSTIN OLSON  
LEA MÁRQUEZ PETERSON

DOCKETED

MAY 5 2021

DOCKETED BY

*lf*

IN THE MATTER OF:

DOCKET NO. S-20983A-16-0299

JEREMY VINCENT DIAZ (CRD #4735164), a single man,

TROY MICHAEL BOHLKE, a single man,

IDIAZ, LLC, an Arizona limited liability company,

WEALTH CREATOR PRIVATE EQUITY, LLC, an Arizona limited liability company,

ARIZONA ACQUISITIONS GROUP, LLC, an Arizona limited liability company,<sup>1</sup>

Respondents.

DECISION NO. 77977

**OPINION AND ORDER**

DATE OF PRE-HEARING CONFERENCE: May 13, 2019

DATES OF HEARING: February 10 and 11, 2020

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Mark Preny

APPEARANCES: Mr. Christopher Nichols, Staff Attorney, Securities Division of the Arizona Corporation Commission.

<sup>1</sup> Respondents Jeremy Diaz, IDIAZ, LLC, and Wealth Creator Private Equity, LLC, did not request a hearing and the Commission's Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties as to those Respondents in Decision No. 77172 was issued on May 15, 2019.

## Table of Contents

1		
2		
3	Procedural History.....	3
4	DISCUSSION.....	6
5	I. Brief Summary.....	6
6	II. Testimony.....	7
7	Jerry Lowe - Division Investigator .....	7
8	Avi Samuel Beliak - Division Forensic Accountant .....	18
9	Bonni Howard – Former AAG Employee.....	20
10	Arthur Flowers - Investor.....	23
11	Roberta Schneck - Investor .....	25
12	Jodi Frazier - Investor .....	27
13	Ann Adams - Investor .....	29
14	III. Legal Argument.....	30
15	A. AAG Units as Securities.....	30
16	B. Attachment of Liability to the Respondents .....	31
17	C. Within or From Arizona .....	32
18	D. Registration Violations.....	33
19	E. Fraud Violations.....	34
20	1. Real Estate Investment .....	35
21	2. Statements Regarding Stephen Kohner .....	36
22	3. Risk and Guarantees.....	36
23	4. Use of Proceeds .....	37
24	5. Analysis and Conclusion .....	39
25	F. Control Person Liability.....	39
26	G. Remedies.....	40
27	1. Restitution.....	41
28	2. Administrative Penalties.....	41
	FINDINGS OF FACT.....	42
	CONCLUSIONS OF LAW.....	48
	ORDER.....	49

1 **BY THE COMMISSION:**

2 On August 30, 2016, the Securities Division ("Division") of the Arizona Corporation  
3 Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order for  
4 Restitution, for Administrative Penalties, of Revocation, and for Other Affirmative Action ("Notice")  
5 against Jeremy Diaz, a single man, IDIAZ, LLC ("IDIAZ"), and Wealth Creator Private Equity, LLC  
6 ("Wealth Creator"), in which the Division alleged violations of the Arizona Securities Act ("Act").

7 On June 19, 2017, the Division filed Affidavits of Service regarding service on Jeremy Diaz.

8 On July 5, 2018, the Division filed a Motion for Leave to Amend Notice of Opportunity for  
9 Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, and Order for  
10 Administrative Penalties. The Division contended that, after further investigation, this case should be  
11 linked with another Division matter "due to the overlap in parties, facts, and time."

12 On July 25, 2018, by Procedural Order, the Division's Motion for Leave to Amend Notice of  
13 Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, and  
14 Order for Administrative Penalties was granted.

15 Also on July 25, 2018, a Procedural Order Regarding Consent to Email Service was filed.

16 On August 7, 2018, the Division filed its Amended Notice of Opportunity for Hearing  
17 Regarding Proposed Order to Cease and Desist, Order for Restitution, and Order for Administrative  
18 Penalties ("Amended Notice"). The Amended Notice added Troy Michael Bohlke, a single man, and  
19 Arizona Acquisitions Group, LLC ("AAG"), as Respondents.

20 On August 14, 2018, the Division filed an Affidavit of Service regarding service on IDIAZ.

21 On January 16, 2019, the Division filed Affidavits of Service regarding service on Wealth  
22 Creator and AAG.

23 On January 17, 2019, the Division filed a Notice of Service by Publication and Affidavits of  
24 Attempted Service in Support of Service by Publication regarding service upon Mr. Diaz, Mr. Bohlke,  
25 Wealth Creator, and AAG.

1 On April 5, 2019, counsel for Mr. Bohlke filed a Notice of Appearance and Request for  
2 Hearing.<sup>2</sup>

3 Also on April 5, 2019, Mr. Bohlke filed his Answer to Notice of Opportunity for Hearing  
4 ("Answer").

5 On April 9, 2019, the Division filed a Proposed Order to Cease and Desist, Order for  
6 Restitution, and Order for Administrative Penalties as to Mr. Diaz, IDIAZ, and Wealth Creator.

7 On April 15, 2019, by Procedural Order, a pre-hearing conference was scheduled for May 13,  
8 2019.

9 On May 13, 2019, the pre-hearing conference was held as scheduled. The Division and  
10 Respondent Troy Michael Bohlke appeared through counsel. The parties discussed the setting of a  
11 hearing and other procedural deadlines.

12 Also on May 13, 2019, by Procedural Order, a hearing was set in this matter to commence on  
13 October 7, 2019.

14 On May 15, 2019, the Commission issued Decision No. 77172, Order to Cease and Desist,  
15 Order for Restitution, and Order for Administrative Penalties against Jeremy Diaz, IDIAZ, and Wealth  
16 Creator.

17 On July 2, 2019, Alan S. Baskin and Baskin Richards, PLC, filed a Motion to Withdraw as  
18 Counsel for Respondent Troy Michael Bohlke, pursuant to A.A.C. R14-3-104(E). Citing ER 1.16(b)(5)  
19 of the Arizona Rules of Professional Conduct, Mr. Baskin asserted that continued representation would  
20 result in a violation of the Rules of Professional Conduct. Mr. Baskin avowed that Respondent Troy  
21 Michael Bohlke had been notified of the hearing dates and the pending deadline for the exchange of  
22 copies of witness lists and exhibits in this matter. Mr. Baskin provided the Commission with the last  
23 known mailing address of Mr. Bohlke.

24 On July 15, 2019, by Procedural Order, the Motion to Withdraw as Counsel filed by attorney  
25 Alan S. Baskin and Baskin Richards, PLC, was granted.

26 ...

27  
28 <sup>2</sup> AAG did not request a hearing.



1 On July 30, 2019, the Division filed a Motion to Continue Administrative Hearing. The  
2 Division requested a continuance due to scheduling issues, namely Division counsel's conflict with  
3 another scheduled administrative hearing and the unavailability of a key witness.

4 On August 7, 2019, by Procedural Order, the hearing was vacated and a procedural conference  
5 was set for September 5, 2019.

6 On September 5, 2019, the procedural conference was held as scheduled. The Division  
7 appeared through counsel. Mr. Bohlke did not appear. The scheduling of a hearing was discussed.

8 On September 5, 2019, by Procedural Order, a hearing in this matter was set to commence on  
9 February 10, 2020.

10 On December 17, 2019, the Division filed a Motion to Continue Administrative Hearing. The  
11 Division requested a continuance of the hearing, scheduled to commence on February 10, 2020, and a  
12 continuance of the deadline for the exchange of witness lists and exhibits, scheduled for December 27,  
13 2020.

14 On December 26, 2019, by Procedural Order, the Division's December 17, 2019 Motion to  
15 Continue Administrative Hearing was denied.

16 On February 3, 2020, the Division filed a Motion for Leave to Present Telephonic Testimony.

17 On February 6, 2020, by Procedural Order, the Division's February 3, 2020 Motion for Leave  
18 to Present Telephonic Testimony was granted.

19 On February 10, 2020, a full public hearing commenced before a duly authorized  
20 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division  
21 appeared through counsel. Mr. Bohlke did not appear. An additional day of the hearing was held on  
22 February 11, 2020. At the conclusion of the hearing, a schedule for the filing of post-hearing briefs  
23 was established whereby the Division would file an initial brief by April 30, 2020, Mr. Bohlke would  
24 file a response brief by June 1, 2020, and the Division would file a reply brief by June 15, 2020.

25 On April 28, 2020, the Division filed its Post-Hearing Brief ("Division Post-Hearing Brief").

26 Mr. Bohlke did not file a Post-Hearing Response Brief by the June 1, 2020 deadline or  
27 thereafter.

28 \* \* \* \* \*

**DISCUSSION****I. Brief Summary**

This is an enforcement action brought against remaining Respondents Troy Michael Bohlke and Arizona Acquisitions Group, LLC, ("Respondents") for alleged violations of the Arizona Securities Act.<sup>3</sup> The Division alleges that the Respondents offered or sold unregistered securities, in violation of A.R.S. § 44-1841. The Division also alleges that the Respondents made offers or sales of unregistered securities while not registered as dealers or salesmen, in violation of A.R.S. § 44-1842. The alleged offers and sales were investments in AAG membership units ("AAG Units") by ten investors ("AAG Investors") in exchange for \$331,000. The Division alleges that Mr. Bohlke and AAG have never been registered with the Commission in any capacity.

The Division further alleges that the Respondents committed fraud in connection with the offer and sale of securities, in violation of A.R.S. § 44-1991, by making false representations, misleading representations, and omissions to AAG Investors. Specifically, the Division alleges that Mr. Bohlke and AAG defrauded investors by: 1) falsely representing that they would be investing in real estate through Westward Fund I, LLC ("Westward"); 2) making misleading representations regarding Stephen Kohner of Westward without disclosing his involvement as a defendant in two lawsuits relating to real estate; 3) making misrepresentations regarding the level of risk associated with the investment; and 4) misrepresenting how the investment proceeds would be used. The Division alleges that Mr. Bohlke is jointly and severally liable for the violations of A.R.S. § 44-1991 by AAG because Mr. Bohlke had the power to control the activities of AAG at all times.

The Division requests that Mr. Bohlke and AAG be ordered to pay restitution in the total amount of \$305,900. The Division further requests that Mr. Bohlke and AAG each be ordered to pay administrative penalties in the total amount of \$150,000. Mr. Bohlke did not appear at the hearing in this matter. AAG did not request a hearing and did not appear at the hearing.

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<sup>3</sup> On May 15, 2019, the Commission issued Decision No. 77172, which resolved all issues as to Respondents Jeremy Vincent Diaz, IDIAZ, and Wealth Creator.

1 **II. Testimony**

2 **Jerry Lowe - Division Investigator**

3 Mr. Lowe testified that he has been an investigator for the Division since early 2015, and was  
4 employed in the same capacity with the Division from May or June of 1997 until October 2005.<sup>4</sup> Mr.  
5 Lowe testified that in October 2005 he went to Colorado Securities where he worked as an investigator  
6 with the same essential duties he has for the Division.<sup>5</sup> Mr. Lowe testified that he has 15 years of prior  
7 experience as a police officer in Nebraska with the Lincoln Police Department where he was involved  
8 in financial investigations for 10 of the 15 years.<sup>6</sup> Mr. Lowe testified that his current job duties include  
9 maintaining case files; interviewing investors, complainants, and witnesses; assisting in the drafting  
10 and service of subpoenas; reviewing subpoenaed documents; participating in investor education efforts;  
11 testifying at administrative hearings and civil or criminal matters that may result from Division actions;  
12 and engaging in covert activities.<sup>7</sup>

13 Mr. Lowe testified that this case was initiated in 2015 and had been assigned to three different  
14 investigators who are no longer with the Division.<sup>8</sup> Mr. Lowe testified that he was reassigned the case  
15 in late spring or early summer of 2018 and that he has been responsible for maintaining the case file  
16 since then.<sup>9</sup>

17 Mr. Lowe testified that when the case had been reassigned to him, he reviewed the case file  
18 maintained by the prior three investigators.<sup>10</sup> Mr. Lowe testified that he continued the investigation,  
19 including a background investigation of Mr. Bohlke.<sup>11</sup> Mr. Lowe testified that Mr. Bohlke currently  
20 resides in Arizona and was residing in Arizona in 2009.<sup>12</sup> Mr. Lowe testified that Mr. Bohlke is not  
21 currently married but was married previously.<sup>13</sup> Mr. Lowe testified that his investigation did not  
22 identify any professional licenses ever held by Mr. Bohlke.<sup>14</sup> Mr. Lowe testified that Mr. Bohlke has

23 <sup>4</sup> Tr. at 16.

24 <sup>5</sup> Tr. at 16.

25 <sup>6</sup> Tr. at 18-19.

26 <sup>7</sup> Tr. at 16-17.

27 <sup>8</sup> Tr. at 19-20.

28 <sup>9</sup> Tr. at 20.

<sup>10</sup> Tr. at 21.

<sup>11</sup> Tr. at 21-22.

<sup>12</sup> Tr. at 23.

<sup>13</sup> Tr. at 23.

<sup>14</sup> Tr. at 23-24.

1 not been registered with the Commission as a securities salesman and had not filed a notice or been  
2 licensed as an investment advisor representative for the period of January 1 to December 31, 2009.<sup>15</sup>

3 Mr. Lowe testified that the Division had performed a background investigation of AAG.<sup>16</sup> Mr.  
4 Lowe testified that the Articles of Organization for AAG had been filed on April 30, 2009.<sup>17</sup> Mr. Lowe  
5 testified that the Articles of Organization list Mr. Bohlke as the manager and a member of AAG with  
6 no other managers listed.<sup>18</sup> Mr. Lowe testified that the registered office of AAG is a residential property  
7 and it is the same address as that listed in the Articles of Organization for Mr. Bohlke.<sup>19</sup> Mr. Lowe  
8 testified that Articles of Amendment for AAG ("First Articles") were filed by Mr. Bohlke as manager  
9 on April 7, 2010.<sup>20</sup> Mr. Lowe testified that the First Articles removed a prior member, Mr. Scott  
10 Barber.<sup>21</sup> Mr. Lowe testified that the First Articles indicate that the manager of AAG makes any and  
11 all decisions and Mr. Barber does not have any say in the financial, legal, or day-to-day operations or  
12 decisions of AAG.<sup>22</sup> Mr. Lowe testified that an additional Articles of Amendment ("Second Articles")  
13 was filed on March 1, 2011, by Mr. Bohlke as manager.<sup>23</sup> Mr. Lowe testified that the Second Articles  
14 removed a prior member, Mr. Ted Peters, from AAG.<sup>24</sup> Mr. Lowe testified that the Second Articles  
15 indicate that the manager of AAG makes any and all decisions and Mr. Peters did not have any say in  
16 the financial, legal, or day-to-day operations or decisions of AAG.<sup>25</sup> Mr. Lowe testified that AAG was  
17 dissolved effective September 19, 2013.<sup>26</sup> Mr. Lowe testified that AAG had neither filed any notice  
18 nor registered with the Commission as a dealer or an investment advisor during the period of January  
19 1 to December 31, 2009.<sup>27</sup>

20 Mr. Lowe testified that two other companies were identified during the investigation of this  
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22 <sup>15</sup> Tr. at 24.

23 <sup>16</sup> Tr. at 25.

24 <sup>17</sup> Tr. at 25.

25 <sup>18</sup> Tr. at 26.

26 <sup>19</sup> Tr. at 26-27.

27 <sup>20</sup> Tr. at 27-28.

28 <sup>21</sup> Tr. at 28.

<sup>22</sup> Tr. at 28.

<sup>23</sup> Tr. at 28-29.

<sup>24</sup> Tr. at 29-30.

<sup>25</sup> Tr. at 30.

<sup>26</sup> Tr. at 30-31.

<sup>27</sup> Tr. at 32-33, 35.

1 matter - Niche Focus Group, LLC ("NFG") and Westward.<sup>28</sup> Mr. Lowe testified that NFG is an entity  
 2 formed by Mr. Bohlke that shared employees with AAG and worked closely with AAG to generate  
 3 and produce promotional materials.<sup>29</sup> Mr. Lowe testified that money was transferred between AAG  
 4 and NFG.<sup>30</sup> Mr. Lowe testified that Ms. Bonni Howard was the office manager for AAG and NFG.<sup>31</sup>  
 5 Mr. Lowe testified that Westward had contracted with NFG to create promotional materials and a  
 6 website for Westward.<sup>32</sup> Mr. Lowe testified that AAG was to raise money for Westward.<sup>33</sup>

7 Mr. Lowe testified that Westward was a Delaware limited liability company associated with  
 8 AAG and formed with the purpose of purchasing real estate at low prices and selling it for a profit.<sup>34</sup>  
 9 Mr. Lowe testified that Westward was formed in May 2009 by Mr. Stephen Kohner.<sup>35</sup> Mr. Lowe  
 10 testified that the Division conducted an investigation of Mr. Stephen Kohner and was aware of a lawsuit  
 11 filed in the Maricopa County Superior Court on October 5, 2007.<sup>36</sup> Mr. Lowe testified that the  
 12 defendants named in the lawsuit were Mr. Stephen Kohner, Jane Doe Kohner, James Polese, and Jane  
 13 Doe Polese.<sup>37</sup> Regarding the lawsuit, Mr. Lowe testified that: one of the counts alleged common law  
 14 fraud; the lawsuit alleged \$12 million in damages; and that the lawsuit was dismissed but had been  
 15 pending during 2009.<sup>38</sup> Mr. Lowe testified that another lawsuit was filed by M&I Marshall and Ilsley  
 16 Bank against Mr. Stephen Kohner and Ms. Patricia L. Kohner, husband and wife, in the Maricopa  
 17 County Superior Court on April 24, 2009, regarding an alleged mortgage default.<sup>39</sup> Mr. Lowe testified  
 18 that the lawsuit was dismissed pursuant to a settlement.<sup>40</sup>

19 Mr. Lowe testified that Mr. Patrick LaVoie also was a founder of Westward.<sup>41</sup> Mr. Lowe  
 20 testified that Mr. LaVoie was interviewed by the Division briefly over the phone.<sup>42</sup> Mr. Lowe testified

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21 <sup>28</sup> Tr. at 34.

22 <sup>29</sup> Tr. at 34.

23 <sup>30</sup> Tr. at 34.

24 <sup>31</sup> Tr. at 41.

25 <sup>32</sup> Tr. at 41.

26 <sup>33</sup> Tr. at 41.

27 <sup>34</sup> Tr. at 35.

28 <sup>35</sup> Tr. at 35-36.

<sup>36</sup> Tr. at 36-37.

<sup>37</sup> Tr. at 37-38.

<sup>38</sup> Tr. at 38.

<sup>39</sup> Tr. at 39-40; Exh. S-14.

<sup>40</sup> Tr. at 40, 86.

<sup>41</sup> Tr. at 42.

<sup>42</sup> Tr. at 42, 217.



1 that Mr. LaVoie said: Westward was a private placement; NFG was hired to produce promotional  
2 materials and advertising; and that Mr. Bohlke had no active role in Westward; and no money from  
3 AAG went to Westward.<sup>43</sup> Mr. Lowe testified that Mr. LaVoie was reluctant to testify in an  
4 administrative hearing due to concerns for his and his family's safety.<sup>44</sup> Mr. Lowe testified that he also  
5 interviewed Mr. Stephen Kohner who indicated that Mr. LaVoie had most of the interactions with Mr.  
6 Bohlke and that he only met Mr. Bohlke a few times to review brochures.<sup>45</sup>

7 Mr. Lowe testified that the Division obtained copies of the marketing materials created by NFG  
8 for Westward from Merrill Lynch, who had obtained the documents from Ms. Lisa Matykiewicz, an  
9 investor in AAG and former client of Mr. Diaz.<sup>46</sup> Mr. Lowe testified that the marketing materials stated  
10 that Westward's mission was to create investor wealth through real estate investments.<sup>47</sup> Mr. Lowe  
11 testified that the marketing materials listed the fund managers as Equity Capital Group, Mr. Stephen  
12 Kohner, and Mr. LaVoie; and listed Equity Capital Group's management team as Mr. Stephen Kohner,  
13 Mr. LaVoie, Mr. Shawn Kohner, and Mr. Tim Kohner.<sup>48</sup> Mr. Lowe testified that the marketing  
14 materials also listed Mr. Bohlke as an advisor, which was not consistent with Mr. LaVoie's statements  
15 when he was interviewed by the Division.<sup>49</sup> Mr. Lowe testified that the marketing materials indicated  
16 Westward sought to raise \$50 million.<sup>50</sup> Mr. Lowe testified that the marketing materials described Mr.  
17 Stephen Kohner's real estate experience, including that: he had been in real estate development since  
18 the early 1980s; he had completed an impressive portfolio of projects, including over 2,000 residential  
19 lots and approximately 8,000 acres of residential development; he had been involved in more than one  
20 and a half billion dollars in real estate ventures; he currently manages projects in the United States with  
21 an estimated completion value of over \$1 billion; and he has extensive experience in real estate lending,  
22 carrying borrower notes, and investing.<sup>51</sup> Mr. Lowe testified that in a section titled "Unmatched  
23 Expertise," the marketing materials stated that Mr. Stephen Kohner was the principal owner of Equity

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24 <sup>43</sup> Tr. at 42.

25 <sup>44</sup> Tr. at 42.

26 <sup>45</sup> Tr. at 43.

27 <sup>46</sup> Tr. at 44; Exh. S-9.

28 <sup>47</sup> Tr. at 44-45.

<sup>48</sup> Tr. at 45.

<sup>49</sup> Tr. at 45.

<sup>50</sup> Tr. at 45.

<sup>51</sup> Tr. at 46.



1 Capital Group with over 25 years of experience in the Phoenix real estate market, that he had been  
 2 involved in over one and half billion dollars in real estate ventures, and that he currently had in excess  
 3 of \$1 billion in development.<sup>52</sup> Mr. Lowe testified that the frequently asked questions portion of the  
 4 materials again stated that he had been a developer in Arizona for the past 30 years, had sold over \$1  
 5 billion in real estate, and had been incredibly successful.<sup>53</sup> Mr. Lowe testified that the marketing  
 6 materials did not disclose any lawsuits against Mr. Stephen Kohner.<sup>54</sup>

7 Mr. Lowe testified that Ms. Matykiewicz was interviewed by the Division and that she had  
 8 become acquainted with AAG through Mr. Diaz, who was her and her husband's investment advisor  
 9 at Merrill Lynch.<sup>55</sup> Mr. Lowe testified that Mr. Diaz told Ms. Matykiewicz that she would be investing  
 10 in Westward and that it was a great investment in real estate.<sup>56</sup> Mr. Lowe testified that Ms. Matykiewicz  
 11 was told that Westward was going to generate a profit by investing in real estate, renovating the real  
 12 estate, and selling it for a profit.<sup>57</sup> Mr. Lowe testified that Ms. Matykiewicz understood that her  
 13 investment funds would be provided to Westward to purchase real estate.<sup>58</sup> Mr. Lowe testified that  
 14 Mr. and Ms. Matykiewicz received the Westward marketing materials from Mr. Bohlke.<sup>59</sup> Mr. Lowe  
 15 testified that Ms. Matykiewicz was not an accredited investor and that Mr. Diaz would have been aware  
 16 of that because he served as her and her husband's financial advisor.<sup>60</sup> Mr. Lowe testified that Ms.  
 17 Matykiewicz and her husband met Mr. Bohlke at a luncheon where he was promoting the investment,  
 18 and, after deciding to invest \$15,000, they met with Mr. Bohlke at his office to complete the  
 19 transaction.<sup>61</sup> Mr. Lowe testified that the AAG investment opportunity terms of agreement that Mr.  
 20 and Ms. Matykiewicz and Mr. Bohlke signed in August 2009 stated that the investment amount was  
 21 \$15,000 in exchange for one unit equal to one percent ownership interest in AAG, with a total expected  
 22 return of \$52,500.<sup>62</sup> Mr. Lowe testified that the agreement also stated that 100 percent of investor funds

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23 <sup>52</sup> Tr. at 46-47.

24 <sup>53</sup> Tr. at 47.

25 <sup>54</sup> Tr. at 47-48.

26 <sup>55</sup> Tr. at 48.

27 <sup>56</sup> Tr. at 49.

28 <sup>57</sup> Tr. at 49, 222.

<sup>58</sup> Tr. at 49, 221.

<sup>59</sup> Tr. at 235.

<sup>60</sup> Tr. at 49-50.

<sup>61</sup> Tr. at 50; Exh. S-15 at ArizCC521.

<sup>62</sup> Tr. at 55-58.

1 would be applied to operations expenses, including airfare, dining, hotels, and miscellaneous travel  
2 costs.<sup>63</sup> Mr. Lowe testified that the agreement was inconsistent with what Ms. Matykiewicz was told  
3 regarding how the investment funds would be used because she was told that they would be used to  
4 purchase real estate.<sup>64</sup> Mr. Lowe testified that the agreement did not include a financial questionnaire  
5 as to the financial status of Mr. and Ms. Matykiewicz.<sup>65</sup> Mr. Lowe testified that Mr. and Ms.  
6 Matykiewicz would not have been eligible to invest in Westward because the minimum investment  
7 was \$50,000 and investors were required to be accredited.<sup>66</sup>

8 Mr. Lowe testified that Ms. Matykiewicz never received any repayment from Mr. Bohlke, Mr.  
9 Diaz, or AAG, but did receive a settlement in excess of \$15,000 from Merrill Lynch.<sup>67</sup> Mr. Lowe  
10 testified that Ms. Matykiewicz submitted a customer complaint form with her bank and in it she  
11 explained that: Mr. Diaz pushed the Westward investment to her and her husband while they were  
12 clients at Merrill Lynch; Mr. Diaz claimed they would get their money back but then he disappeared;  
13 they lost the entire investment; and Mr. Diaz introduced them to Mr. Bohlke who "turned out to be a  
14 scam artist, or at least full of crap."<sup>68</sup>

15 Mr. Lowe testified that the Division also received documents from Merrill Lynch regarding  
16 another investor in AAG, Veronica Donnellan.<sup>69</sup> Mr. Lowe testified that this case originated by a  
17 complaint made by Ms. Donnellan to Merrill Lynch.<sup>70</sup> Mr. Lowe testified that Division Staff  
18 interviewed Ms. Donnellan, a 92-year-old Arizona resident who is a retired school teacher and Catholic  
19 nun and is legally blind.<sup>71</sup> Mr. Lowe testified that Ms. Donnellan is a former client of Mr. Diaz and  
20 Mr. Diaz introduced her to the AAG investment.<sup>72</sup> Mr. Lowe testified that Ms. Donnellan met with  
21 Mr. Bohlke and that she recalled the investment pertained to commercial properties.<sup>73</sup> Mr. Lowe  
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23 <sup>63</sup> Tr. at 56-57.

24 <sup>64</sup> Tr. at 57.

25 <sup>65</sup> Tr. at 57.

26 <sup>66</sup> Tr. at 58-60; Exh. S-15 at ArizCC569-ArizCC580.

27 <sup>67</sup> Tr. at 50-52.

28 <sup>68</sup> Tr. at 53-54; Exh. S-15 at ArizCC522-ArizCC524.

<sup>69</sup> Tr. at 60-61.

<sup>70</sup> Tr. at 63.

<sup>71</sup> Tr. at 61.

<sup>72</sup> Tr. at 61.

<sup>73</sup> Tr. at 61-62.

1 testified that Ms. Donnellan first invested \$30,000 in AAG at \$15,000 per unit.<sup>74</sup> Mr. Lowe testified  
2 that Ms. Donnellan made an additional investment in AAG in the amount of \$33,500 by direct wire  
3 transfer to AAG's bank account.<sup>75</sup>

4 Mr. Lowe testified that the Division received an investor list from Ms. Howard that was  
5 prepared by her near the end of 2009.<sup>76</sup> Mr. Lowe testified that the investors and the amount invested  
6 on the list prepared by Ms. Howard generally was consistent with the information obtained by the  
7 Division from other sources with some exceptions.<sup>77</sup> Mr. Lowe testified that four investors were on  
8 Ms. Howard's list but not on the list prepared by the Division's forensic accountant because the  
9 Division was unable to confirm these investments.<sup>78</sup> Mr. Lowe testified that one investor, Mr. Scott  
10 Barber, was on both Ms. Howard's and the Division's investor lists, but Ms. Howard's list indicated  
11 he invested \$120,000 while the Division only was able to confirm an investment of \$25,000.<sup>79</sup> Mr.  
12 Lowe testified that Ms. Howard's list indicated that Ms. Donnellan invested \$45,000, in contrast to the  
13 \$63,500 confirmed by the Division.<sup>80</sup> Mr. Lowe testified that the investor list from Ms. Howard  
14 indicated that Mr. Matt Kalatsky invested \$15,000 in AAG, but the Division was able to confirm only  
15 \$10,000.<sup>81</sup>

16 Mr. Lowe testified that Mr. Kalatsky was interviewed by the Division and he recalled investing  
17 \$10,000 in AAG for a one percent interest with an expected return of \$47,500 and an investment term  
18 of 180 days.<sup>82</sup> Mr. Lowe testified that Mr. Kalatsky was not an accredited investor and he understood  
19 that he would not have any active management or operational participation in AAG.<sup>83</sup> Mr. Lowe  
20 testified that Mr. Kalatsky received the Westward marketing materials and believed he was investing  
21 in AAG and Westward through AAG, and that the investment was for renovating houses and selling  
22 them for a profit.<sup>84</sup>

23 <sup>74</sup> Tr. at 62-64; Exh. S-16.

24 <sup>75</sup> Tr. at 64, 67; Exh. S-12.

25 <sup>76</sup> Tr. at 68-69; Exh. S-17.

26 <sup>77</sup> Tr. at 69.

27 <sup>78</sup> Tr. at 69-71; Exhs. S-17 and S-30.

28 <sup>79</sup> Tr. at 71-72; Exhs. S-17 and S-30.

<sup>80</sup> Tr. at 72-73; Exhs. S-17 and S-30.

<sup>81</sup> Tr. at 73, 75; Exhs. S-12, S-17, and S-30.

<sup>82</sup> Tr. at 74.

<sup>83</sup> Tr. at 75.

<sup>84</sup> Tr. at 224-225.

1 Mr. Lowe testified that Mr. Paul Ladd was an investor in AAG and a former client of Mr. Diaz,  
 2 that Mr. Ladd is now 90-years-old, and that Mr. Ladd was living in Colorado in 2009.<sup>85</sup> Mr. Lowe  
 3 testified that Mr. Ladd was on the Division's investor list but not the list prepared by Ms. Howard.<sup>86</sup>  
 4 Mr. Lowe testified that Mr. Ladd was interviewed by the Division, and although his memory was  
 5 limited, Mr. Ladd recalled making investments with Mr. Diaz, including an oil investment and an  
 6 investment in the Iraqi Dinar.<sup>87</sup> Mr. Lowe testified that he was not sure if Mr. Ladd recalled investing  
 7 in AAG, but in September 2009 Mr. Ladd invested \$45,000 in AAG.<sup>88</sup> Mr. Lowe testified that Mr.  
 8 Ladd was not an accredited investor.<sup>89</sup> Mr. Lowe testified that Mr. Ladd's contact regarding the  
 9 investment in AAG was through Mr. Diaz and not Mr. Bohlke.<sup>90</sup>

10 Mr. Lowe testified that Ms. Patricia Becher also invested \$30,000 in AAG in August 2009 while  
 11 she was living in Nebraska.<sup>91</sup> Mr. Lowe testified that Ms. Becher was employed in the insurance  
 12 industry and learned about the investment from a colleague.<sup>92</sup> Mr. Lowe testified that Ms. Becher  
 13 spoke directly with Mr. Bohlke who told her that the investment would be used to purchase properties,  
 14 renovate the properties, and sell the properties for a profit.<sup>93</sup> Mr. Lowe testified that Ms. Becher  
 15 understood that she would be a passive investor in AAG.<sup>94</sup>

16 Mr. Lowe testified that the Division obtained copies of terms of agreement between AAG and  
 17 investors or potential investors, including Ms. Becher, Ms. Lisa Cronstrom,<sup>95</sup> Ms. Jodi and Mr. John  
 18 Frazier, Mr. Kalatsky, Mr. Tom Longo, Mr. and Ms. Matykiewicz, Loan Mitigation Experts, LLC, and  
 19 Ms. Schneck.<sup>96</sup> Mr. Lowe testified that the terms of agreement documents are generally consistent for  
 20 each of the investors.<sup>97</sup>

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21  
 22 <sup>85</sup> Tr. at 78.

23 <sup>86</sup> Tr. at 78-79; Exh. S-30.

24 <sup>87</sup> Tr. at 79-80.

25 <sup>88</sup> Tr. at 80-82; Exh. S-12.

26 <sup>89</sup> Tr. at 226.

27 <sup>90</sup> Tr. at 235.

28 <sup>91</sup> Tr. at 82-83, 85-86; Exhs. S-12, S-17, and S-30.

<sup>92</sup> Tr. at 83.

<sup>93</sup> Tr. at 84, 228.

<sup>94</sup> Tr. at 84.

<sup>95</sup> Mr. Lowe testified that Ms. Cronstrom was interviewed by the Division and she had decided not to invest in AAG because she had an uneasy feeling about Mr. Bohlke and stopped payment on a check issued to him. Tr. at 96-97.

<sup>96</sup> Tr. at 87-89; Exh. S-8.

<sup>97</sup> Tr. at 90.

1 Mr. Lowe testified that the terms sheet for Mr. Longo was for four units at \$65,000 or \$16,250  
2 per unit.<sup>98</sup> Mr. Lowe testified that in an email sent by Ms. Howard to Mr. Bohlke and Mr. Diaz  
3 regarding the term sheet for Mr. Longo, Ms. Howard explained that the \$5,000 differential from the  
4 normal pricing structure could be justified because they were closer to closing deals and thus the value  
5 had increased.<sup>99</sup> Mr. Lowe testified that the email also stated the allocation of the \$65,000 investment  
6 (\$20,000 to Mr. Diaz with a notation of "\$5k of this to Matt," \$40,000 to NFG, and \$5,000 to Mr.  
7 Ladd) which Mr. Lowe testified was not consistent with the terms of agreement or what investors  
8 generally were told about how funds would be used.<sup>100</sup>

9 Mr. Lowe testified that Mr. and Ms. Frazier received information from Ms. Howard, including  
10 biographical information on Mr. LaVoie and Mr. Stephen Kohner, a link to an audio file and a written  
11 version of the audio titled "Frequently Asked Questions," and a document titled "Understanding the  
12 Westward Fund."<sup>101</sup> Mr. Lowe testified that the biographical information for Mr. Stephen Kohner  
13 indicated that: he had been involved in real estate development since the early 1980s; he had completed  
14 a number of real estate developments in Arizona over the past 25 years, including 2,000 residential lots  
15 and 8,000 residential lots for development; he had been involved in lending, carrying borrower notes,  
16 and investing; his projects have included 12,000 acres of land for residential and commercial  
17 development in Arizona, California, and New Mexico with an estimated completion value in excess of  
18 \$1 billion; and he has had over \$1.5 billion in past project success.<sup>102</sup> Mr. Lowe testified that the civil  
19 lawsuits involving Mr. Stephen Kohner were not mentioned in the biographical information.<sup>103</sup> Mr.  
20 Lowe testified that: Ms. Frazier had been in contact with Mr. Diaz for almost a year after Mr. Bohlke  
21 disappeared; Ms. Frazier had been assured by Mr. Diaz that he was trying to locate Mr. Bohlke to at  
22 least get a portion of her funds back; Mr. Diaz had relocated to Texas to pursue an opportunity with oil  
23 investors to try to make enough money to pay Ms. Frazier back for her investment with AAG; and after  
24 a year Mr. Diaz stopped responding to Ms. Frazier.<sup>104</sup>

25 <sup>98</sup> Tr. at 97, 99; Exh. S-21.

26 <sup>99</sup> Tr. at 98; Exh. S-21.

27 <sup>100</sup> Tr. at 98-99; Exh. S-21.

28 <sup>101</sup> Tr. at 99-101; Exh. S-23.

<sup>102</sup> Tr. at 102; Exh. S-23 at ACC000139.

<sup>103</sup> Tr. at 102.

<sup>104</sup> Tr. at 104.



1 Mr. Lowe testified that Mr. Arthur Flowers and Ms. Louise Flowers filed a complaint against  
 2 Mr. Bohlke in the Maricopa County Superior Court on November 15, 2013.<sup>105</sup> Mr. Lowe testified that  
 3 Mr. Flowers was an investor in AAG and a former client of Mr. Diaz.<sup>106</sup> Mr. Lowe testified that the  
 4 complaint pertained to acts that occurred in Maricopa County and alleged fraud, including that Mr.  
 5 Bohlke made false material representations and omissions of fact regarding repayment of money loaned  
 6 to him by Mr. and Ms. Flowers, and that Mr. Bohlke misrepresented to them that he would invest the  
 7 loaned funds in AAG and its membership in Westward, but instead he invested the loaned funds in  
 8 NFG, a company that is now dissolved.<sup>107</sup> Mr. Lowe testified that he spoke with Mr. Flowers, who  
 9 described his transaction with AAG and Mr. Bohlke as an investment and not a loan.<sup>108</sup> Mr. Lowe  
 10 testified that Mr. Flowers received a promissory note from Mr. Bohlke after the investment was made  
 11 as an attempt to recoup his \$45,000 investment.<sup>109</sup> Mr. Lowe testified that Mr. Kalatsky also received  
 12 a promissory note.<sup>110</sup> Mr. Lowe testified that the lawsuit brought by Mr. and Ms. Flowers resulted in  
 13 a judgment against Mr. Bohlke from which they obtained \$8,000.<sup>111</sup>

14 Mr. Lowe testified that Mr. Bohlke and Ms. Howard were the original authorized signers for an  
 15 AAG account at Chase Bank open from May 2009 to December 2009, and that Ms. Howard was  
 16 removed as a signer on December 9, 2009.<sup>112</sup> Mr. Lowe testified that the account was closed as an  
 17 overdraft write-off.<sup>113</sup>

18 Mr. Lowe testified that AAG stopped operating in early 2010, in part because a number of  
 19 employees began to distance themselves from AAG and Mr. Bohlke after realizing that Mr. Bohlke  
 20 was not following through on promises he had made to investors.<sup>114</sup> Mr. Lowe testified that in  
 21 December 2009 Ms. Howard emailed other AAG employees with a list of AAG investors indicating a  
 22 total amount invested of \$472,000, which did not include an additional \$100,000 loan to Paul Ladd for  
 23

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24 <sup>105</sup> Tr. at 104-105; Exh. S-25.

25 <sup>106</sup> Tr. at 105.

26 <sup>107</sup> Tr. at 106; Exh. S-25.

27 <sup>108</sup> Tr. at 106-107.

28 <sup>109</sup> Tr. at 107; Exh. S-25.

<sup>110</sup> Tr. at 107.

<sup>111</sup> Tr. at 107-108.

<sup>112</sup> Tr. at 65; Exh. S-10.

<sup>113</sup> Tr. at 66; Exh. S-10.

<sup>114</sup> Tr. at 108.



1 NFG.<sup>115</sup> Mr. Lowe testified that one of the employees, Mr. Chris Martin, responded and stated "Wow  
 2 that is a lot of money! I honestly am of the mind set to walk away from all this, I would rather start  
 3 fresh, without Troy!"<sup>116</sup> Mr. Lowe testified that Ms. Howard responded "I completely agree!"<sup>117</sup> Mr.  
 4 Lowe testified that Ms. Howard also sent an email to the other employees, designed to reduce Mr.  
 5 Bohlke's role from manager to member and included terms that: each member have equal voting rights;  
 6 all financial documentation be reconciled and shared with the entire board; bank accounts be closed  
 7 and any negative balances be paid in full; instances of financial misappropriation be repaired and agreed  
 8 to by the board; all financial records be evaluated by the board; nonbusiness expenses incurred by Mr.  
 9 Bohlke be accounted for with personally-guaranteed promissory notes from Mr. Bohlke backed by  
 10 shares of stock; Mr. Bohlke sign a legal agreement absolving members of any financial responsibility;  
 11 and Mr. Bohlke step down from his role as CEO and have no further signing rights or access to financial  
 12 resources of NFG or AAG.<sup>118</sup> Mr. Lowe testified that Ms. Howard and two others severed their  
 13 relationships with NFG and AAG through an agreement signed by them and Mr. Bohlke on December  
 14 11, 2009, that released them from any noncompete agreements and absolved them from any legal or  
 15 financial responsibilities for the two entities.<sup>119</sup> Mr. Lowe testified that the agreement also indicated  
 16 that the members of NFG and AAG believed that funds had been mismanaged and guarantees had been  
 17 made to clients and investors that realistically could not have been fulfilled.<sup>120</sup>

18 Mr. Lowe testified that Mr. Stephen Kohner and Mr. LaVoie became aware of what was  
 19 happening at AAG.<sup>121</sup> Mr. Lowe testified that Mr. LaVoie emailed Ms. Howard and Mr. Bohlke on  
 20 January 12, 2010, referencing and attaching a January 8, 2010 letter which stated that Westward was  
 21 being dissolved, that Mr. Bohlke had violated conditions of the Westward operating agreement, and  
 22 that Mr. Bohlke and AAG no longer were authorized agents for Westward and could no longer  
 23 represent to investors that they were affiliated with the fund.<sup>122</sup> Mr. Lowe testified that the letter further  
 24

25 <sup>115</sup> Tr. at 109-110; Exh. S-22.

26 <sup>116</sup> Tr. at 111; Exh. S-22 at ACC000119.

27 <sup>117</sup> Tr. at 111; Exh. S-22 at ACC000119.

28 <sup>118</sup> Tr. at 111-112; Exh. S-22 at ACC000237-ACC000238.

<sup>119</sup> Tr. at 113-114, 116; Exh. S-18.

<sup>120</sup> Tr. at 114-115; Exh. S-18.

<sup>121</sup> Tr. at 116.

<sup>122</sup> Tr. at 117-118; Exh. S-11.

1 stated that Mr. Stephen Kohner believed Mr. Bohlke and AAG had obtained investors for AAG by  
 2 suggesting to investors that they were investing in and affiliating with Westward.<sup>123</sup> Mr. Lowe testified  
 3 that a Certificate of Cancellation for Westward was filed with the Delaware Secretary of State on  
 4 January 12, 2010.<sup>124</sup>

5 Mr. Lowe testified that the Division received no response after having subpoenaed documents  
 6 from Mr. Bohlke and AAG, and that Mr. Bohlke failed to appear after the Division subpoenaed him to  
 7 testify under oath prior to the hearing.<sup>125</sup>

8 Avi Samuel Beliak - Division Forensic Accountant

9 Mr. Beliak testified that he is a forensic accountant who has been employed by the Division for  
 10 over five years.<sup>126</sup> Mr. Beliak testified that he has approximately 14 years forensic accounting  
 11 experience in the private and public sectors.<sup>127</sup> Mr. Beliak testified that he worked on the matter  
 12 involving Mr. Diaz and Mr. Bohlke by: examining bank statements related to them and their entities,  
 13 including examining the underlying check withdrawal and deposit details; examining investor  
 14 contracts; reviewing documents provided by Merrill Lynch; and reviewing the investor list prepared  
 15 by Ms. Howard.<sup>128</sup> Mr. Beliak testified that he prepared a summary of the information listing the  
 16 investors in AAG, including their names, investment amount, any repayment, and the net amount  
 17 invested minus any repayment.<sup>129</sup> Based on his review of the documents, Mr. Beliak testified that  
 18 \$331,000 was invested in AAG.<sup>130</sup> Mr. Beliak testified that he was unable to substantiate each  
 19 investment with financial records, including the \$45,000 investment made by Ms. Schneck, which was  
 20 substantiated through an interview with her, an investor contract, and the investor list prepared by Ms.  
 21 Howard.<sup>131</sup>

22 Mr. Beliak testified that he also prepared a summary of deposits and withdrawals from AAG's  
 23 Chase account for the time period November 13 through 20, 2009, which showed the use of funds from

24 <sup>123</sup> Tr. at 118-119; Exh. S-11.

25 <sup>124</sup> Tr. at 119-120; Exh. S-5(b).

26 <sup>125</sup> Tr. at 121-122.

27 <sup>126</sup> Tr. at 123-124.

28 <sup>127</sup> Tr. at 125.

<sup>128</sup> Tr. at 125-127.

<sup>129</sup> Tr. at 126; Exh. S-30.

<sup>130</sup> Tr. at 128.

<sup>131</sup> Tr. at 128-129.

1 Loss Mitigation Experts, LLC.<sup>132</sup> Mr. Beliak testified that as of November 13, 2009, the account had  
 2 an overdrawn negative balance of \$3,300 before \$30,000 was deposited from Loss Mitigation Experts,  
 3 LLC, plus an additional deposit of \$2,900.<sup>133</sup> Mr. Beliak testified that those deposits were used to pay  
 4 two investors, Mr. Barber and Mr. Kalatsky, and one check was made to Mr. Bohlke for \$2,500.<sup>134</sup> Mr.  
 5 Beliak testified that there also were four ATM withdrawals totaling \$649, and almost \$25,000 in checks  
 6 and debit card transactions, including to a dentist, a gym, a chiropractor, cleaners, restaurants, and other  
 7 individuals, including Ms. Howard.<sup>135</sup>

8 Mr. Beliak testified that he also prepared a summary of deposits and withdrawals from the same  
 9 account from July 10 through August 24, 2009.<sup>136</sup> Mr. Beliak testified that as of July 10, 2009, the  
 10 account had an overdrawn negative balance of \$229.61.<sup>137</sup> Mr. Beliak testified that over 96 percent of  
 11 the deposits during this time period came from investors, and 32 percent of the withdrawals were  
 12 payments to Mr. Bohlke or Mr. Diaz.<sup>138</sup> Mr. Beliak testified that the remainder of the withdrawals  
 13 included payments to an upscale women's clothing company, the Arizona Diamondbacks, Target,  
 14 Ashley's Furniture, Community Bridges, Babies R Us, Van Dyke Laser Skin, other restaurants and  
 15 entities, and rent payments to Crystal Springs.<sup>139</sup>

16 Mr. Beliak testified that he also prepared a summary of deposits and withdrawals from the same  
 17 account from June 1 through November 20, 2009.<sup>140</sup> Mr. Beliak testified that the account had a balance  
 18 of \$32.60 on June 1, 2009, when investor activity began on the account.<sup>141</sup> Mr. Beliak testified that  
 19 over 70 percent of the funds deposited into the account during this time period were from investors.<sup>142</sup>  
 20 Mr. Beliak testified that he also reviewed bank documents for NFG's bank account from which he  
 21 discovered that \$35,000 was deposited into the AAG account from the NFG account, originally coming  
 22

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23 <sup>132</sup> Tr. at 129-130; Exh. S-26.

24 <sup>133</sup> Tr. at 130-131.

25 <sup>134</sup> Tr. at 131.

26 <sup>135</sup> Tr. at 131-132.

27 <sup>136</sup> Tr. at 133; Exh. S-27.

28 <sup>137</sup> Tr. at 133-134.

<sup>138</sup> Tr. at 134.

<sup>139</sup> Tr. at 135.

<sup>140</sup> Tr. at 136; Exh. S-28.

<sup>141</sup> Tr. at 137.

<sup>142</sup> Tr. at 137.

1 from Mr. Ladd, who had given \$100,000 to NFG.<sup>143</sup> Mr. Beliak testified that over 22 percent of all  
 2 funds withdrawn from the AAG account during this time period went directly to Mr. Diaz or Mr.  
 3 Bohlke, two payments went to investors Mr. Barber and Mr. Kalatsky, approximately \$1,600 was  
 4 withdrawn from ATMs, and the rest of the funds were withdrawn from miscellaneous withdrawals,  
 5 checks, and debit card activity, including rent payments, doctors, groceries, furniture, vehicle-related  
 6 expenses, other stores, and other ATM or debit card transactions indicative of personal use.<sup>144</sup> Mr.  
 7 Beliak testified that no money was sent to Westward, Mr. LaVoie, or Mr. Stephen Kohner.<sup>145</sup>

8 Mr. Beliak testified that bank records for an account held by Mr. Diaz showed a transfer from  
 9 the AAG account on August 21, 2009, in the amount of \$33,500, which followed a wire transfer for  
 10 the same amount from Ms. Donnellan into the AAG account.<sup>146</sup> Mr. Beliak testified that the first  
 11 purchase after the August 21, 2009 transfer was at Sports Authority, with subsequent purchases and  
 12 withdrawals from August 21 to August 24, 2009, including two payday loan places, a CPA, a bill pay  
 13 service, Southwest Airlines, Best Buy, restaurants and groceries, a consultant, St. Theresa Catholic  
 14 Church for tithing, a debt payment, and a medical bill payment.<sup>147</sup> Mr. Beliak testified that all but  
 15 \$1,700 of the \$33,500 was spent between August 21 and August 24, 2009.<sup>148</sup> Mr. Beliak testified that  
 16 no money was sent by Mr. Diaz to Westward, any title company, Mr. LaVoie, or Mr. Stephen  
 17 Kohner.<sup>149</sup>

18 Bonni Howard - Former AAG Employee

19 Ms. Howard testified that she is a resident of Scottsdale, Arizona.<sup>150</sup> Ms. Howard testified that  
 20 she met Mr. Bohlke at a party in 2008 and she began working for him at NFG and AAG in 2009.<sup>151</sup>  
 21 Ms. Howard testified that NFG was a promotion and public relations company that provided services  
 22 to other companies, including writing and publishing articles posted on major internet sites, designing  
 23

24 <sup>143</sup> Tr. at 137-138.

25 <sup>144</sup> Tr. at 139-140.

26 <sup>145</sup> Tr. at 145.

27 <sup>146</sup> Tr. at 140-142; Exh. S-29.

28 <sup>147</sup> Tr. at 143-144.

<sup>148</sup> Tr. at 144.

<sup>149</sup> Tr. at 144-145.

<sup>150</sup> Tr. at 154.

<sup>151</sup> Tr. at 154-155.

1 websites, and branding.<sup>152</sup> Ms. Howard testified that she was the Executive Director of Operations for  
 2 NFG and Mr. Bohlke was the CEO.<sup>153</sup> Ms. Howard testified that she also was a member of NFG with  
 3 her ownership interest having been provided to her by Mr. Bohlke.<sup>154</sup> Ms. Howard testified that her  
 4 job duties at NFG included corresponding with potential clients, managing of staff, providing reviews  
 5 of staff, leading meetings, and other tasks requested by Mr. Bohlke.<sup>155</sup>

6 Ms. Howard testified that she began working at AAG in 2009, a few months after she started at  
 7 NFG.<sup>156</sup> Ms. Howard testified that she was the Director of Investor Relations for AAG and had a small  
 8 membership interest in AAG that was provided to her by Mr. Bohlke.<sup>157</sup> Ms. Howard testified that her  
 9 job duties at AAG were similar to her job duties at NFG and included communicating with Mr. Kohler,  
 10 Mr. LaVoie, and investors.<sup>158</sup> Ms. Howard testified that AAG and NFG had a physical office in  
 11 Phoenix, Arizona, where investors occasionally would come to sign documents or meet with Mr.  
 12 Bohlke.<sup>159</sup> Ms. Howard testified that Mr. Bohlke told her that he had an arrangement with the landlord  
 13 and did not pay rent during 2009.<sup>160</sup> Ms. Howard testified that she was a signer on the AAG account  
 14 at Chase Bank because Mr. Bohlke was unable to open up an account on his own.<sup>161</sup>

15 Ms. Howard testified that in her work for AAG, it was common for her to send emails to  
 16 potential investors providing agreements and other documents.<sup>162</sup> Ms. Howard testified that the  
 17 information she sent to potential investors was provided to her by Mr. Bohlke, who directed which  
 18 documents to be sent.<sup>163</sup> Ms. Howard testified that a terms of agreement was provided to all potential  
 19 investors, and other documents typically included an operating agreement, a frequently asked questions  
 20 document, a brochure for Westward, and wiring instructions.<sup>164</sup> Ms. Howard testified that she assisted

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21  
 22 <sup>152</sup> Tr. at 155.

23 <sup>153</sup> Tr. at 156.

24 <sup>154</sup> Tr. at 156-157.

25 <sup>155</sup> Tr. at 158.

26 <sup>156</sup> Tr. at 157.

27 <sup>157</sup> Tr. at 157-158.

28 <sup>158</sup> Tr. at 158-159.

<sup>159</sup> Tr. at 193-194.

<sup>160</sup> Tr. at 194.

<sup>161</sup> Tr. at 186.

<sup>162</sup> Tr. at 161.

<sup>163</sup> Tr. at 160, 162.

<sup>164</sup> Tr. at 161-162, 166.



1 in creating the brochure for Westward using information provided to her by Mr. Bohlke.<sup>165</sup> Ms.  
 2 Howard testified that Mr. Bohlke provided the list of advisors in the Westward brochure, which  
 3 included Mr. Bohlke, Mr. Shawn Kohner, Mr. Tim Kohner, and Ms. Howard, though Ms. Howard did  
 4 not consider herself to be an advisor to Westward.<sup>166</sup>

5 Ms. Howard testified that she told potential investors that the intent of Westward was to make  
 6 a real estate investment trust using residential real estate, with investors to share in the profits obtained  
 7 from Westward's real estate activities.<sup>167</sup> Ms. Howard testified that AAG was a holding company for  
 8 Westward, and she understood that an investment in AAG was also, in part, an investment in  
 9 Westward.<sup>168</sup> Ms. Howard testified that she was not aware of any pending or recent litigation against  
 10 Mr. Stephen Kohner, nor was she aware of any information regarding litigation against Mr. Stephen  
 11 Kohner being provided in any of the materials sent to potential investors.<sup>169</sup> Ms. Howard testified that  
 12 she did not know whether or not Mr. Bohlke was aware of the litigation involving Mr. Stephen  
 13 Kohner.<sup>170</sup>

14 Ms. Howard testified that she worked for AAG and NFG for approximately nine months and  
 15 left both companies voluntarily when she learned about the misappropriation of funds, dishonesty in  
 16 the information Mr. Bohlke passed on to investors through her, and the bank account having been  
 17 emptied.<sup>171</sup> Ms. Howard testified that Mr. Bohlke gave her the impression that properties had been  
 18 purchased, but when she spoke with Mr. Stephen Kohner and Mr. LaVoie she learned that no properties  
 19 had been purchased.<sup>172</sup> Ms. Howard testified that she believed funds had been misappropriated because  
 20 she had learned that Mr. Bohlke furnished and decorated a new apartment, he used funds to pay for  
 21 personal expenses for his wife, he paid for a personal driver, he may have had a cosmetic procedure,  
 22 and he took potential investors and other people out to dinner.<sup>173</sup> Ms. Howard testified that money  
 23 from AAG was used for those purposes and that she was not aware of Mr. Bohlke having another job

24 <sup>165</sup> Tr. at 163-165; Exh. S-9.

25 <sup>166</sup> Tr. at 165.

26 <sup>167</sup> Tr. at 167; Exh. S-20 at ACC000068.

27 <sup>168</sup> Tr. at 170-171.

28 <sup>169</sup> Tr. at 169-170.

<sup>170</sup> Tr. at 198.

<sup>171</sup> Tr. at 175.

<sup>172</sup> Tr. at 176, 178.

<sup>173</sup> Tr. at 176-177.



1 or source of income at the time.<sup>174</sup>

2 Ms. Howard testified that she and two other employees, Mr. Michael Swaine and Mr. Chris  
3 Martin, met Mr. Bohlke at the office on December 11, 2009, where they shared their concerns and had  
4 Mr. Bohlke sign a document absolving the members of NFG and AAG from any financial or legal  
5 responsibility.<sup>175</sup> Ms. Howard testified that the document signed by Mr. Bohlke stated that the  
6 members of NFG and AAG believed that funds had been mismanaged and that Mr. Bohlke  
7 misrepresented financial potential by telling investors that they would make a significant profit when  
8 in fact no real estate was being purchased and there was nothing to profit from, and that guarantees had  
9 been made to investors that realistically could not have been fulfilled.<sup>176</sup> Specifically, Ms. Howard  
10 testified that documents were given to AAG investors that included a promise to repay the amount  
11 invested plus additional money within a certain time period, which was presented to investors as a  
12 guarantee.<sup>177</sup>

13 Ms. Howard testified that the normal pricing structure was \$15,000 for each unit.<sup>178</sup> As to the  
14 allocation of the \$65,000 invested by Mr. Longo, Ms. Howard testified that the allocation of the funds  
15 was inconsistent with what investors generally were told.<sup>179</sup>

16 Ms. Howard testified that she compiled a list of investors and estimated the total funds invested  
17 to be \$472,000.<sup>180</sup> Ms. Howard testified that she was not aware of any other income or cash inflow to  
18 AAG other than funds from investors.<sup>181</sup>

19 Arthur Flowers - Investor

20 Mr. Flowers testified that he is currently a resident of Illinois, but previously lived in Mesa,  
21 Arizona, where he resided in 2009.<sup>182</sup> Mr. Flowers testified that during his career he worked in the  
22 telecommunications industry and did some work part-time for a fire department.<sup>183</sup> Mr. Flowers

24 <sup>174</sup> Tr. at 177.

25 <sup>175</sup> Tr. at 181-181, 184, 187; Exhs. S-18, Exh. S-22 at ACC000237 to ACC000238.

26 <sup>176</sup> Tr. at 184-186.

27 <sup>177</sup> Tr. at 186.

28 <sup>178</sup> Tr. at 173.

<sup>179</sup> Tr. at 174; Exh. S-21.

<sup>180</sup> Tr. at 180; Exh. S-17.

<sup>181</sup> Tr. at 186.

<sup>182</sup> Tr. at 201.

<sup>183</sup> Tr. at 202-203.

1 testified that he was involved with an investment company in Phoenix, Arizona, in the early 1990s that  
2 sold life insurance and stocks, and he had a Series 6 license to sell stocks, which he did professionally  
3 for a couple years.<sup>184</sup> Mr. Flowers testified that he has held personal investments in stocks and has  
4 some real estate investment experience, owning several apartment buildings in Illinois in the 1980s and  
5 1990s.<sup>185</sup>

6 Mr. Flowers testified that he was introduced to Mr. Bohlke by Mr. Diaz, his financial advisor  
7 at the time.<sup>186</sup> Mr. Flowers testified that he invested \$45,000 in AAG in July or August 2009.<sup>187</sup> Mr.  
8 Flowers testified that he met with Mr. Bohlke in person before making his investment and they  
9 discussed Mr. Bohlke's experience in investments, AAG, Westward, and the \$15,000 cost for an  
10 investment unit, which entitled the investor to one percent ownership in AAG.<sup>188</sup> Mr. Flowers testified  
11 that he understood he would not be involved in the day-to-day operations of AAG.<sup>189</sup> Mr. Flowers  
12 testified that Mr. Bohlke told him that he could expect a return on his investment estimated at \$150,000  
13 in 18 months, and that the investment was almost risk-free.<sup>190</sup> Mr. Flowers testified that he signed an  
14 AAG terms of agreement and provided it to Mr. Bohlke at one of their in-person meetings.<sup>191</sup> Mr.  
15 Flowers testified that Mr. Bohlke did not ask him whether he was an accredited investor, that he and  
16 his wife's joint income never has been more than \$300,000 per year, and they have not had assets  
17 totaling more than \$1 million.<sup>192</sup>

18 Mr. Flowers testified that he received the Westward brochure from Mr. Bohlke and he was led  
19 to believe that AAG was involved with Westward because Mr. Bohlke was listed in the Westward  
20 documents.<sup>193</sup> Mr. Flowers testified that he believed Westward would acquire properties that were  
21 being foreclosed on and then would sell them to AAG, which would turn them over and resell them.<sup>194</sup>  
22 Mr. Flowers testified that based on what he was told by Mr. Bohlke, he believed his investment funds

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23 <sup>184</sup> Tr. at 214-215.

24 <sup>185</sup> Tr. at 215-216.

25 <sup>186</sup> Tr. at 203.

26 <sup>187</sup> Tr. at 203-204.

27 <sup>188</sup> Tr. at 204-205.

28 <sup>189</sup> Tr. at 205.

<sup>190</sup> Tr. at 205, 210.

<sup>191</sup> Tr. at 209.

<sup>192</sup> Tr. at 209-210.

<sup>193</sup> Tr. at 206; Exh. S-9.

<sup>194</sup> Tr. at 206.

1 would be used to purchase assets and resell them for profit, and that his funds would be combined with  
 2 funds from other investors.<sup>195</sup> Mr. Flowers testified that Mr. Bohlke did not tell him that his investment  
 3 funds would be used for Mr. Bohlke's personal expenses, but if Mr. Flowers had known, he would not  
 4 have invested.<sup>196</sup> Mr. Flowers testified that he was not informed of the pending litigation against Mr.  
 5 Stephen Kohner and that he would not have invested if he had known.<sup>197</sup>

6 Mr. Flowers testified that he did not receive a return within the time frame promised and he  
 7 filed a civil lawsuit against Mr. Bohlke.<sup>198</sup> Mr. Flowers testified that, as alleged in the civil complaint  
 8 filed in Maricopa County Superior Court, Mr. Bohlke represented to him that his funds would be  
 9 invested in AAG and its membership in Westward, but instead the invested funds were put into NFG.<sup>199</sup>  
 10 Mr. Flowers testified that he attended a party for investors at the NFG office and Mr. Bohlke told him  
 11 that the funds were invested in NFG and used for NFG's rent and office equipment.<sup>200</sup> Mr. Flowers  
 12 testified that he considered the funds he gave to Mr. Bohlke to be an investment, but he later received  
 13 a promissory note from Mr. Bohlke for the amount invested to be paid back in 90 days.<sup>201</sup> Mr. Flowers  
 14 testified that he has since received approximately \$8,000 from Mr. Bohlke.<sup>202</sup>

15 Roberta Schneck - Investor

16 Ms. Schneck testified that she is a current resident of Oregon and lived in Florida in 2009.<sup>203</sup>  
 17 Ms. Schneck testified that she was not married in 2009.<sup>204</sup> Ms. Schneck testified that she is a retired  
 18 Air Force Master Sergeant of the Air Force Reserve and taught eighth grade math and science for 10  
 19 years.<sup>205</sup> Ms. Schneck testified that she has not worked in the securities, finance, or real estate  
 20 industries.<sup>206</sup>

21 Ms. Schneck testified that she invested in AAG.<sup>207</sup> After reviewing the AAG terms of

22 <sup>195</sup> Tr. at 206-207, 210.

23 <sup>196</sup> Tr. at 207.

24 <sup>197</sup> Tr. at 208.

25 <sup>198</sup> Tr. at 211; Exh. S-25.

26 <sup>199</sup> Tr. at 211-212; Exh. S-25 at 5.

27 <sup>200</sup> Tr. at 212-213.

28 <sup>201</sup> Tr. at 213-214; Exh. S-25 at Exh. A.

<sup>202</sup> Tr. at 214.

<sup>203</sup> Tr. at 237.

<sup>204</sup> Tr. at 238.

<sup>205</sup> Tr. at 238.

<sup>206</sup> Tr. at 238.

<sup>207</sup> Tr. at 239.

1 agreement with her name on it, Ms. Schneck recalled that she invested \$45,000.<sup>208</sup> Ms. Schneck  
 2 testified that Mr. Diaz was her investment counselor at Merrill Lynch and Mr. Diaz brought the AAG  
 3 investment opportunity to her attention.<sup>209</sup> Ms. Schneck testified that the funds she invested came out  
 4 of her Merrill Lynch investment account, which was previously handled by Mr. Diaz but he had left  
 5 Merrill Lynch prior to the investment.<sup>210</sup> Ms. Schneck testified that she was not aware of Mr. Diaz  
 6 having asked her if she was an accredited investor and that, as her financial advisor, Mr. Diaz would  
 7 have had an understanding of her financial situation.<sup>211</sup> Ms. Schneck testified that in the two years  
 8 preceding her investment she did not have annual income greater than \$200,000 and she did not have  
 9 a net worth exceeding \$1 million.<sup>212</sup>

10 Ms. Schneck testified that she could not recall ever speaking with Mr. Bohlke, but that she knew  
 11 he was the individual Mr. Diaz represented.<sup>213</sup> Ms. Schneck testified that she understood the  
 12 investment would be short term, a matter of months, and that her investment funds would be used to  
 13 purchase and refurbish homes for resale.<sup>214</sup> Ms. Schneck testified that Mr. Diaz told her that the homes  
 14 to be purchased were abandoned or foreclosed homes and that her investment funds would be combined  
 15 with funds from other investors.<sup>215</sup> Ms. Schneck testified that Mr. Diaz told her that the risk would be  
 16 minimal because they would still own the homes and that she should expect a profit on her  
 17 investment.<sup>216</sup> Ms. Schneck testified that she knew she would not have any participation in the  
 18 management or operations of the company.<sup>217</sup>

19 Ms. Schneck testified that she recalled having seen at least part of the Westward marketing  
 20 materials before she invested and she believed they had been provided to her by Mr. Diaz.<sup>218</sup> Ms.  
 21 Schneck testified that the AAG terms of agreement, which stated that investor funds would be applied  
 22

23 <sup>208</sup> Tr. at 245-246; Exh. S-8. Prior to her review of the terms of agreement, Ms. Schneck believed she had invested \$15,000.  
 24 Tr. at 239.

25 <sup>209</sup> Tr. at 239-240.

26 <sup>210</sup> Tr. at 242-243.

27 <sup>211</sup> Tr. at 250-251.

28 <sup>212</sup> Tr. at 251.

<sup>213</sup> Tr. at 240.

<sup>214</sup> Tr. at 240.

<sup>215</sup> Tr. at 241-242.

<sup>216</sup> Tr. at 242.

<sup>217</sup> Tr. at 242.

<sup>218</sup> Tr. at 243-244; Exh. S-9.

1 to operational expenses, including marketing costs, airfare, dining, hotels, and travel costs, was not  
 2 consistent with what Mr. Diaz told her about how her investment funds would be used because Mr.  
 3 Diaz told her the funds would be used to purchase and repair homes for sale.<sup>219</sup> Ms. Schneck testified  
 4 that Mr. Diaz did not disclose that some of her investment funds may be used to pay personal expenses  
 5 of the managers of AAG.<sup>220</sup> Ms. Schneck testified that no one disclosed to her any pending or recently  
 6 pending legal action against any of the managers of AAG or the house flipping company.<sup>221</sup> Ms.  
 7 Schneck testified that if such information had been disclosed, she would not have invested.<sup>222</sup>

8 Ms. Schneck testified that she has not received any return on her investment.<sup>223</sup> Ms. Schneck  
 9 testified that she spoke with Mr. Diaz about why she had not received a return and he apologized and  
 10 said there was "some kind of legal glitch."<sup>224</sup>

11 Jodi Frazier - Investor

12 Ms. Frazier testified that she is a married resident of Gilbert, Arizona, and has lived there since  
 13 April 2004.<sup>225</sup> Ms. Frazier testified that she does not have any educational or work experience in the  
 14 securities or finance industries.<sup>226</sup> Ms. Frazier testified that she and her husband never have had a  
 15 combined annual income of more than \$300,000 per year or a combined net worth of over \$1 million.<sup>227</sup>  
 16 Ms. Frazier testified that Mr. Diaz was her former financial planner and he introduced her to Westward  
 17 and AAG after he left Merrill Lynch.<sup>228</sup> Ms. Frazier testified that Mr. Diaz would have been aware of  
 18 her and her husband's financial position.<sup>229</sup>

19 Ms. Frazier testified that after Mr. Diaz introduced her to AAG, she met with Mr. Bohlke  
 20 regarding the AAG investment, how the funds would be spent, and the return on investment.<sup>230</sup> Ms.  
 21 Frazier testified that she invested \$22,500 for 1.5 units at \$15,000 each for a term of 180 days.<sup>231</sup> Ms.

22 <sup>219</sup> Tr. at 246-247; Exh. S-8.

23 <sup>220</sup> Tr. at 249.

24 <sup>221</sup> Tr. at 248.

25 <sup>222</sup> Tr. at 249.

26 <sup>223</sup> Tr. at 249.

27 <sup>224</sup> Tr. at 249-250.

28 <sup>225</sup> Tr. at 253.

<sup>226</sup> Tr. at 254.

<sup>227</sup> Tr. at 255.

<sup>228</sup> Tr. at 255.

<sup>229</sup> Tr. at 255-256.

<sup>230</sup> Tr. at 256.

<sup>231</sup> Tr. at 256, 262; Exh. S-24 at ACC000378.



1 Frazier testified that most of the information she received prior to investing was provided by Mr.  
 2 Bohlke, who explained that she could expect about double her investment and that the investment was  
 3 relatively short term.<sup>232</sup> Ms. Frazier testified that she understood she would not be participating in the  
 4 company but only providing investment capital.<sup>233</sup> Ms. Frazier testified that she was told her  
 5 investment funds would be used to provide printed materials for larger investors to help get the larger  
 6 investors to pool larger sums of money.<sup>234</sup> Ms. Frazier testified that the AAG terms of agreement stated  
 7 that 100 percent of investor funds would be applied to operations, which was consistent with how Mr.  
 8 Bohlke described how her investment would be used.<sup>235</sup> Ms. Frazier testified that Mr. Bohlke did not  
 9 tell her that some of her investment funds would be used on his personal expenses, and that she would  
 10 not have invested had she known he would use the funds for his personal gain.<sup>236</sup>

11 Ms. Frazier testified that the information and materials she received from Mr. Bohlke indicated  
 12 that her investment would go to Westward, and Mr. Bohlke did not distinguish between AAG and  
 13 Westward.<sup>237</sup> Ms. Frazier testified that Mr. Bohlke told her the investment was lower risk because the  
 14 individuals involved were real estate specialists.<sup>238</sup> Ms. Frazier testified that she received materials  
 15 from Mr. Bohlke regarding Westward, and the information regarding the individuals involved in  
 16 Westward was important to her in deciding whether to invest.<sup>239</sup> Ms. Frazier testified that she  
 17 understood that the success of the investment was tied to the success of those individuals.<sup>240</sup> Ms.  
 18 Frazier testified that prior to her investment she was not provided with any information regarding legal  
 19 action against Mr. Stephen Kohner and she was not aware that he had been named recently in civil  
 20 litigation against him involving real estate.<sup>241</sup> Ms. Frazier testified that if she had been aware of the  
 21 civil litigation then she would not have invested.<sup>242</sup>

22 Ms. Frazier testified that she has not received any return on her investment or any payments

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23 <sup>232</sup> Tr. at 257.

24 <sup>233</sup> Tr. at 257.

25 <sup>234</sup> Tr. at 258, 265.

26 <sup>235</sup> Tr. at 263-264; Exh. S-24 at ACC000380.

27 <sup>236</sup> Tr. at 264-265.

28 <sup>237</sup> Tr. at 258.

<sup>238</sup> Tr. at 258-259.

<sup>239</sup> Tr. at 259-261; Exh. S-24 at ACC000395.

<sup>240</sup> Tr. at 261.

<sup>241</sup> Tr. at 261.

<sup>242</sup> Tr. at 261-262.



1 from Mr. Diaz, Mr. Bohlke, or AAG.<sup>243</sup> Ms. Frazier testified that it has been many years since she had  
 2 any contact with Mr. Diaz or Mr. Bohlke.<sup>244</sup> Ms. Frazier testified that she attempted to reach Mr. Diaz  
 3 but did not get a response.<sup>245</sup> Ms. Frazier testified that she believed the investment was safe because  
 4 Mr. Diaz recommended it, and the loss of the investment has caused a financial hardship for her and  
 5 her husband.<sup>246</sup>

6 Ann Adams - Investor

7 Ms. Adams testified that she has been a resident of Chandler, Arizona, for 10 years and has  
 8 been married for 17 years.<sup>247</sup> Ms. Adams testified that she has not had any formal training regarding  
 9 securities and investments and she has not worked in the securities or finance industries.<sup>248</sup> Ms. Adams  
 10 testified that she is a real estate broker and does some real estate investing, owning a few rental  
 11 properties.<sup>249</sup> Ms. Adams testified that she and her husband own real estate that is worth more than \$1  
 12 million but there is debt against the properties and the net worth would not be that much.<sup>250</sup> Ms. Adams  
 13 testified that she and her husband never have had an annual combined income in excess of \$300,000.<sup>251</sup>

14 Ms. Adams testified that she and her business partner from Loss Mitigation Experts, LLC, a  
 15 house flipping company they owned, became familiar with AAG after attending a real estate broker's  
 16 party.<sup>252</sup> Ms. Adams testified that she went to the party understanding that AAG had ties to a company  
 17 that was buying bulk properties, which was attractive to her because she was an independent real estate  
 18 broker and wanted connections with people and opportunities in the real estate business.<sup>253</sup> Ms. Adams  
 19 testified that after she first met Mr. Bohlke, she and her business partner went to AAG's office where  
 20 they were told about Westward.<sup>254</sup> Ms. Adams testified that she and her business partner's business,  
 21 Loss Mitigation Experts, LLC, invested \$30,000 in exchange for 2 percent ownership and 2 percent of  
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23 <sup>243</sup> Tr. at 265.

24 <sup>244</sup> Tr. at 265.

25 <sup>245</sup> Tr. at 265-266.

26 <sup>246</sup> Tr. at 268.

27 <sup>247</sup> Tr. at 269-270.

28 <sup>248</sup> Tr. at 270.

<sup>249</sup> Tr. at 270.

<sup>250</sup> Tr. at 271.

<sup>251</sup> Tr. at 271.

<sup>252</sup> Tr. at 271-272, 277.

<sup>253</sup> Tr. at 272.

<sup>254</sup> Tr. at 273.

1 the profits.<sup>255</sup> Ms. Adams testified that her understanding was that her investment money would be  
 2 combined with investments from other investors and used to buy properties in bulk.<sup>256</sup> Ms. Adams  
 3 testified that she understood that she and her business partner were passive investors and would not  
 4 have any managerial authority.<sup>257</sup> Ms. Adams testified that she was told they would at least get their  
 5 investment money back, but most likely they would receive three to four times the amount invested.<sup>258</sup>  
 6 Ms. Adams testified that she also was told that there was a possibility that as a real estate agent she  
 7 could have access to listing the properties.<sup>259</sup> Ms. Adams testified that she was not told about pending  
 8 or recent litigation involving Mr. Stephen Kohner.<sup>260</sup>

9 Ms. Adams testified that Loss Mitigation Experts, LLC, never received a return, but she learned  
 10 later that the investment went to fund Mr. Bohlke's "lavish lifestyle."<sup>261</sup> Ms. Adams testified that she  
 11 would not have invested if she had known that Mr. Bohlke would use the funds for personal  
 12 expenses.<sup>262</sup> Ms. Adams testified that the lost investment caused Loss Mitigation Experts, LLC, to go  
 13 out of business.<sup>263</sup> Ms. Adams testified that she met with Mr. Bohlke and he stated that he wanted to  
 14 pay them back but no payment was received and she could no longer reach him.<sup>264</sup>

### 15 **III. Legal Argument**

#### 16 **A. AAG Units as Securities**

17 The Division contends that the membership interests in AAG are securities. The Division notes  
 18 that the AAG agreements, while stating that they were not intended to constitute a security or public  
 19 offering, identified legal costs for "Securities and Corporate Attorney" including "Regulation 'S' &  
 20 Regulation 'D' coverage for both US & foreign investors."<sup>265</sup> The Division contends that the AAG  
 21 Units are investment contracts under the *Howey*<sup>266</sup> test because they involve an investment of money

23 <sup>255</sup> Tr. at 273, 276, 280, 285.

24 <sup>256</sup> Tr. at 280, 287.

25 <sup>257</sup> Tr. at 289.

26 <sup>258</sup> Tr. at 273, 286.

27 <sup>259</sup> Tr. at 280.

28 <sup>260</sup> Tr. at 293.

<sup>261</sup> Tr. at 273-274, 276.

<sup>262</sup> Tr. at 292.

<sup>263</sup> Tr. at 276.

<sup>264</sup> Tr. at 275.

<sup>265</sup> Exh. S-8 at ACCB000046.

<sup>266</sup> *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946).

1 in a common enterprise with the expectation of profits from the managerial efforts of others.<sup>267</sup>

2 Investment contracts are included in the statutory definition of a security.<sup>268</sup> The elements of  
3 an investment contract were set forth in *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946), and adopted  
4 in Arizona in *Rose v. Dobras*, 128 Ariz. 209 (App. 1981). Under *Howey* and *Rose*, an investment  
5 contract will be found in “any situation where (1) individuals are led to invest money (2) in a common  
6 enterprise (3) with the expectation that they will earn a profit solely through the efforts of others.”<sup>269</sup>

7 Ten investors<sup>270</sup> invested money in AAG totaling \$331,000, satisfying the first prong of the  
8 *Howey* test.<sup>271</sup> With the exception of Ms. Schneck’s investment, the AAG Investors’ funds were all  
9 deposited into a single AAG bank account managed by Mr. Bohlke,<sup>272</sup> demonstrating a common  
10 enterprise through horizontal commonality.<sup>273</sup> The AAG Investors expected a profit because the AAG  
11 Units promised cash payments 180 days after the investments were made, and the AAG Investors were  
12 told that returns would be two or three times the amount of the their investments.<sup>274</sup> Mr. Bohlke was  
13 the CEO and president of AAG; the only manager of AAG, a manager-managed limited liability  
14 company; and responsible for all AAG decisions.<sup>275</sup> The AAG Investors understood that they were  
15 passive investors with no control over AAG, as specifically stated in the AAG agreements.<sup>276</sup>  
16 Consequently, the AAG Investors’ expectations of profits relied solely on the efforts of others. Thus,  
17 the AAG Units meet the elements set forth under *Howey*, making them investment contracts and,  
18 therefore, securities.

#### 19 B. Attachment of Liability to the Respondents

20 Pursuant to A.R.S. § 44-2003(A), the Act provides for joint and several liability against any  
21 person “who made, participated in or induced the unlawful sale or purchase” of a security.<sup>277</sup> The

22 <sup>267</sup> Division Post-Hearing Brief at 11-13.

23 <sup>268</sup> A.R.S. § 44-1801(27)(a).

24 <sup>269</sup> *Rose*, 128 Ariz. at 211.

25 <sup>270</sup> Scott Barber, Jodi Frazier, Veronica Donnellan, Arthur Flowers, Matthew Kalatsky, Paul Ladd, Loss Mitigation Experts, LLC, Patricia Massey-Becher, Lisa Matykiewicz, and Roberta Schneck (collectively, “AAG Investors”).

26 <sup>271</sup> Tr. at 126-128; Exh. S-30.

27 <sup>272</sup> Tr. at 65; Exhs. S-10, S-29.

28 <sup>273</sup> “Horizontal commonality requires a pooling of funds collectively managed by a promoter or third party.” *Foy v. Thorp*, 186 Ariz. 151, 158 (App. 1996).

<sup>274</sup> Exh. S-8; Tr. at 84, 205, 273.

<sup>275</sup> Tr. at 25-26, 28-30, 157-158; Exhs. S-1, S-2, S-3.

<sup>276</sup> Amended Notice at ¶ 74; Answer at ¶ 74; Tr. at 84, 205, 242, 257, 289; Exh. S-8.

<sup>277</sup> A.R.S. § 44-2003(A).

1 Arizona Supreme Court has considered A.R.S. § 44-2003(A) to contain “sweeping language of  
2 inclusion.”<sup>278</sup>

3 The Division contends that Mr. Bohlke and AAG participated in the sale of securities to each  
4 of the AAG Investors. The Division notes that the AAG agreements were executed or drafted for  
5 execution by Mr. Bohlke as “Managing Director” of AAG.<sup>279</sup> The Division contends that Mr. Bohlke  
6 was responsible for determining the documents and information disclosed to potential investors.<sup>280</sup> The  
7 Division argues that Mr. Bohlke solicited many of the AAG Investors himself, including two who met  
8 him at AAG’s office.<sup>281</sup> The Division contends that AAG also participated in the sales by providing  
9 wiring instructions to potential investors and by receiving investment proceeds into AAG’s bank  
10 account, which was controlled by Mr. Bohlke.<sup>282</sup>

11 In applying A.R.S. § 44-2003(A), the word “participate” has been found to mean “‘to take part  
12 in something (an enterprise or activity) ... in common with others,’ or ‘to have a share or part in  
13 something.’”<sup>283</sup> The Arizona Court of Appeals has found that, under A.R.S. § 44-2003(A), “induce  
14 may indicate overcoming indifference, hesitation, or opposition, usu[ally] by offering for consideration  
15 persuasive advantages or gains that bring about a desired decision.”<sup>284</sup> “[O]ne may simultaneously  
16 induce and participate in an illegal sale.”<sup>285</sup> The evidence of record establishes that AAG and Mr.  
17 Bohlke made, participated in or induced the unlawful sale of the AAG Units.

### 18 C. Within or From Arizona

19 The Division contends that Mr. Bohlke and AAG offered or sold securities “within or from this  
20 state,” an element of violations of A.R.S. §§ 44-1841, 44-1842, 44-1991(A). The Division contends  
21 that the phrase “from this state” includes transactions that do not occur entirely inside Arizona, and it  
22 was designed to protect against a base of operations being established in Arizona for the offer and sale

23 <sup>278</sup> *Grand v. Nacchio*, 225 Ariz. 171, 174, ¶ 18 (2010).

24 <sup>279</sup> Exh. S-8.

25 <sup>280</sup> Amended Notice at ¶¶ 58, 65, 66; Answer at ¶¶ 58, 65, 66; Tr. at 40-44, 52, 100-101, 119, 155-156, 160, 162-165, 198,  
206, 244, 292; Exhs. S-9, S-11, S-15 at ArizCC525-ArizCC532, ArizCC537-ArizCC567, S-23, S-24 at ACC000392-  
ACC000407.

26 <sup>281</sup> Tr. at 50, 193-194, 266-267, 271-274.

27 <sup>282</sup> Exhs. S-10, S-20 at ACC000075, S-24 at ACC000389.

28 <sup>283</sup> *Grand*, 225 Ariz. at 175, ¶ 21, citing *Standard Chartered PLC v. Price Waterhouse*, 190 Ariz. 6, 21 (App. 1996), as  
corrected on denial of reconsideration (Jan. 13, 1997).

<sup>284</sup> *Standard Chartered*, 190 Ariz. at 21-22.

<sup>285</sup> *Grand*, 225 Ariz. at 175, ¶ 22.

1 of securities to persons outside of the state.<sup>286</sup>

2 The Division contends that the sales of membership units in AAG occurred within or from  
3 Arizona because AAG conducted its sales from a base of operations in Arizona: AAG is a limited  
4 liability company organized under the laws of the state of Arizona;<sup>287</sup> AAG's registered office is the  
5 Scottsdale, Arizona, residence of Mr. Bohlke;<sup>288</sup> AAG maintained a physical office in Phoenix,  
6 Arizona, while it was selling AAG Units;<sup>289</sup> AAG's bank account that received the investment proceeds  
7 was opened at a branch in Arizona;<sup>290</sup> and AAG's bank statements show continuous debit card activity  
8 in Arizona throughout the time period of the offering until the last of the investment proceeds were  
9 spent in November 2009.<sup>291</sup> In addition, the Division argues that several AAG Investors were Arizona  
10 residents when they made their investments, including Ms. Donnellan, Ms. Matykiewicz, Ms. Frazier,  
11 Mr. Flowers, and Ms. Adams, who is a member of Loss Mitigation Experts, LLC.<sup>292</sup>

12 As noted by the Division, the record establishes that some of the AAG Units were sold to  
13 Arizona investors and, therefore, the sales occurred within or from this state. The evidence also  
14 establishes that Mr. Bohlke and AAG conducted their business in Arizona. The Division has  
15 established that the securities at issue were sold "within or from this state," as required to find a  
16 violation of A.R.S. §§ 44-1841, 44-1842, and 44-1991(A).

#### 17 D. Registration Violations

18 Under A.R.S. § 44-1841, it is unlawful to sell or offer for sale within or from Arizona any  
19 securities unless those securities have been registered or are exempt from registration. AAG's  
20 securities have not been registered by the Commission.<sup>293</sup> Under A.R.S. § 44-1842, it is unlawful for  
21 any dealer or salesman to sell or offer to sell any securities within or from Arizona unless the dealer or  
22 salesman is registered. Mr. Bohlke and AAG were not registered with the Commission as securities

24 <sup>286</sup> *Chrysler Capital Corp. v. Century Power Corp.*, 800 F. Supp. 1189, 1191 (S.D.N.Y. 1992) (interpreting Arizona Securities Act).

25 <sup>287</sup> Amended Notice at ¶ 11; Answer at ¶ 11; Tr. at 25-26; Exh. S-1.

26 <sup>288</sup> Amended Notice at ¶ 10; Answer at ¶ 10; Tr. at 23, 26-27; Exh. S-1.

27 <sup>289</sup> Tr. at 50, 193-194, 266-267.

28 <sup>290</sup> Exh. S-10 at ACC004604-ACC004605.

<sup>291</sup> Exh. S-10 at ACC004617-ACC004619, ACC004637-ACC004641, ACC004649-ACC004652, ACC004657-ACC004659, ACC004664.

<sup>292</sup> Tr. at 48, 61, 201, 253, 269.

<sup>293</sup> Tr. at 32-33; Exh. S-7.



1 dealers or salesman.<sup>294</sup>

2 Mr. Bohlke, in his answer, raised an affirmative defense that “[t]he stock at issue was exempt  
3 from registration and/or sold in exempt transactions.”<sup>295</sup> Under A.R.S. § 44-2033, the burden of proof  
4 to establish an exemption from registration is borne by the party raising the defense. However, Mr.  
5 Bohlke did not appear at the hearing and presented no evidence to support his argument of an  
6 exemption. The AAG agreements refer to Regulation S and Regulation D.<sup>296</sup> As noted by the Division,  
7 Regulation S is inapplicable to the transactions at issue because Regulation S is a federal exemption  
8 applying only to offers and sales of securities outside the United States.<sup>297</sup> The Division contends that  
9 Regulation D is also inapplicable because the Respondents did not comply with the Commission’s  
10 Rules governing limited offering exemptions by failing to file a Form D notice with the Commission<sup>298</sup>  
11 and by failing to provide unaccredited investors with an audited balance sheet.<sup>299</sup>

12 The Division contends that Mr. Bohlke acted as a salesman<sup>300</sup> and AAG as a dealer<sup>301</sup> in the  
13 offer and sale of the AAG Units to the AAG Investors. As we have found, *supra*, AAG and Mr. Bohlke  
14 made, participated in or induced the unlawful sale of the AAG Units. The record does not establish  
15 the presence of any exemptions to the registration requirements. Accordingly, we find that Mr. Bohlke  
16 committed 10 violations of A.R.S. §§ 44-1841 and 44-1842 by selling unregistered securities as an  
17 unregistered salesman. We further find that AAG committed 10 violations of A.R.S. §§ 44-1841 and  
18 44-1842 by selling unregistered securities as an unregistered dealer.

#### 19 E. Fraud Violations

20 The Division contends that Mr. Bohlke and AAG engaged in multiple violations of the antifraud  
21 provisions of the Act, A.R.S. § 44-1991(A). Section 44-1991(A) provides:

23 <sup>294</sup> Tr. at 24, 32-33; Exhs. S-6, S-7.

24 <sup>295</sup> Answer at 10.

25 <sup>296</sup> Exh. S-8 at ACCB000046.

26 <sup>297</sup> Division Post-Hearing Brief at 17, citing 17 C.F.R. §§ 230.901-905 (2014); *Zacharias v. SEC*, 569 F.3d 458, 465 (D.C. Cir. 2009).

27 <sup>298</sup> A.A.C. R14-4-126(D).

28 <sup>299</sup> A.A.C. R14-4-126(C)(2)(a), (b)(ii).

<sup>300</sup> A “salesman” is “an individual, other than a dealer, employed, appointed or authorized by a dealer to sell securities” within Arizona. A.R.S. § 44-1801(23).

<sup>301</sup> A “dealer” is “an issuer, other than an investment company, who, directly or through an officer, director, employee or agent who is not registered as a dealer under this chapter, engages in selling securities issued by such issuer.” A.R.S. § 44-1801(10)(b).

1 It is a fraudulent practice and unlawful for a person, in connection with  
 2 a transaction or transactions within or from this state involving an offer  
 3 to sell or buy securities, or a sale or purchase of securities, including  
 4 securities exempted under section 44-1843 or 44-1843.01 and including  
 5 transactions exempted under section 44-1844, 44-1845 or 44-1850,  
 6 directly or indirectly to do any of the following:

- 7 1. Employ any device, scheme or artifice to defraud.
- 8 2. Make any untrue statement of material fact, or omit to state  
 9 any material fact necessary in order to make the statements  
 10 made, in light of the circumstances under which they were  
 11 made, not misleading.
- 12 3. Engage in any transaction, practice or course of business  
 13 which operates or would operate as a fraud or deceit.

14 An issuer of securities has an affirmative duty not to mislead potential investors.<sup>302</sup> Under  
 15 A.R.S. § 44-1991(A)(2), a material fact is one that “would have assumed actual significance in the  
 16 deliberations of the reasonable buyer.”<sup>303</sup> The test does not require an omission or misstatement to  
 17 actually have been significant to a particular buyer.<sup>304</sup> Materiality also will be found when there is a  
 18 “substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable  
 19 investor as having significantly altered the total mix of information made available.”<sup>305</sup>

#### 20 1. Real Estate Investment

21 The Division contends that Mr. Bohlke and AAG defrauded investors by making false and  
 22 misleading statements that the investors would be investing in real estate through Westward. The  
 23 Division notes that Westward retained NFG, Mr. Bohlke’s company, to create its promotional materials  
 24 and agreed to pay AAG a 7.5 percent commission on investments in Westward originated by AAG.<sup>306</sup>

25  
 26 <sup>302</sup> *Trimble v. Am. Savings Life Ins. Co.*, 152 Ariz. 548, 553 (App. 1986).

27 <sup>303</sup> *Aaron v. Fromkin*, 196 Ariz. 224, 227, ¶ 14 (App. 2000).

28 <sup>304</sup> *Hirsch v. Ariz. Corp. Comm’n*, 237 Ariz. 456, 464, ¶ 27 (App. 2015).

<sup>305</sup> *Caruthers v. Underhill*, 230 Ariz. 513, 524, ¶ 14 (App. 2000).

<sup>306</sup> Amended Notice at ¶ 58; Answer at ¶ 58; Tr. at 40-42, 44, 59, 119, 155-156; Exhs. S-9, S-11, S-15 at ArizCC578-ArizCC579.

1 The Division states that Mr. Bohlke and NFG made the marketing materials and presented them to  
 2 potential investors.<sup>307</sup> The Division contends that Mr. Bohlke and others acting on behalf of AAG told  
 3 at least six of the AAG Investors that they would be investing in real estate through Westward, but  
 4 instead sold them AAG Units with the investment proceeds neither going to Westward nor being used  
 5 to invest in real estate.<sup>308</sup>

## 6 2. Statements Regarding Mr. Stephen Kohner

7 The Division also contends that Mr. Bohlke and AAG made misleading statements to AAG  
 8 Investors regarding Mr. Stephen Kohner. The Division argues that Westward promotional materials  
 9 created by Mr. Bohlke and NFG made representations touting the qualifications of the “incredibly  
 10 successful” Mr. Stephen Kohner,<sup>309</sup> stating that he had been involved in more than \$1.5 billion in real  
 11 estate ventures and currently was managing real estate projects valued at over \$1 billion.<sup>310</sup> One AAG  
 12 Investor received additional biographical information regarding Mr. Stephen Kohner’s real estate  
 13 success.<sup>311</sup> The Division argues that Mr. Bohlke, AAG, and the documents provided to AAG Investors  
 14 did not disclose that, at the time of the AAG offering, Mr. Stephen Kohner was a defendant in two  
 15 lawsuits pertaining to real estate: 1) a multi-million dollar suit against Mr. Stephen Kohner and other  
 16 defendants alleging fraud in connection with a real estate acquisition, and 2) a mortgage deficiency  
 17 action alleging Mr. Stephen Kohner defaulted on a mortgage loan.<sup>312</sup> The Division contends that the  
 18 failure to disclose the lawsuits to the AAG Investors made the promotional materials provided  
 19 misleading.

## 20 3. Risk and Guarantees

21 The Division further argues that Mr. Bohlke and AAG misled the AAG Investors regarding the  
 22 level of risk associated with the investment. The Division contends that at least four AAG Investors  
 23

24 <sup>307</sup> Amended Notice at ¶¶ 65-66; Answer at ¶¶ 65-66; Tr. at 44, 52, 100-101, 162-164, 198, 206, 244, 292; Exhs. S-9, S-15  
 at ArizCC525-ArizCC532, ArizCC537-ArizCC567, S-23, S-24 at ACC000392-ACC000407.

25 <sup>308</sup> Tr. at 42, 49, 84, 118-119, 126-128, 167, 171, 144-145, 185, 188, 206-207, 221-222, 224-225, 228, 240, 244, 247, 258,  
 283; Exhs. S-8, S-10, S-11, S-17, S-26, S-27, S-28, S-29, S-30.

26 <sup>309</sup> Mr. Stephen Kohner is the manager of SAK Financial, LLC, d/b/a Equity Capital Group, which in turn is the manager  
 of Westward.

27 <sup>310</sup> Amended Notice at ¶¶ 63-66; Answer at ¶¶ 63-66; Tr. at 44-47, 52, 100-101, 162-164, 198, 206, 244, 292; Exhs. S-5a,  
 S-9, S-15 at ArizCC525-ArizCC532, ArizCC537-ArizCC567, S-23, S-24 at ACC000392-ACC000407.

28 <sup>311</sup> Tr. at 101-102, 267; Exh. S-23 at ACC000139-ACC000141.

<sup>312</sup> Tr. at 37-40; Exhs. S-13 at ¶¶ 12, 48, 55, S-14 at ¶¶ 2, 9, 22.

1 were told that returns were guaranteed or that there was little to no risk associated with the AAG  
 2 investments.<sup>313</sup> The Division argues that those representations were false because the investment  
 3 proceeds were not invested in secure assets, but were used for payments to Mr. Bohlke, Mr. Diaz,  
 4 members of AAG, and payments for Mr. Bohlke's personal expenses.<sup>314</sup> The Division notes that other  
 5 members of AAG took steps to stop Mr. Bohlke from making such representations, specifically a letter  
 6 drafted by Ms. Howard stating that guarantees had been made to investors that realistically could not  
 7 have been met.<sup>315</sup> The Division further argues that because nearly all of the AAG Investors lost their  
 8 entire investments, the guarantees or representations of low risk made by Mr. Bohlke and AAG were  
 9 not reasonable.<sup>316</sup>

#### 10 4. Use of Proceeds

11 The Division also contends that Mr. Bohlke and AAG misrepresented to the AAG Investors  
 12 how the investment proceeds would be used. The Division argues that at least six AAG Investors were  
 13 told that their investment would be used to invest in real estate through Westward, but none of the AAG  
 14 Investor funds were used for that purpose.<sup>317</sup>

15 Further, the Division argues that Mr. Bohlke and AAG used AAG Investor funds in a manner  
 16 that was inconsistent with representations in the AAG Agreements, which stated that 100 percent of  
 17 investor funds would be applied to "Operations."<sup>318</sup> The AAG Agreements defined "Operations  
 18 Expenses" to include: 1) marketing costs such as website development, graphic design, and printing;  
 19 2) personnel costs such as investor relations, bloggers, and public relations; 3) entertainment expenses  
 20 such as airfare, dining, and hotels; and 4) legal costs for a securities and corporate attorney."<sup>319</sup> The  
 21 AAG Agreement did not state that investor funds would be used to pay commissions, distributions to  
 22 AAG members, or pay for the personal expenses of Mr. Bohlke and Mr. Diaz.<sup>320</sup> Specifically, the  
 23 Division notes the following uses of AAG Investor funds that were contrary to the representations in

24 <sup>313</sup> Tr. at 84, 112, 115, 183-184, 185-186, 210, 241-242, 258-259; Exhs. S-18, S-22 at ACC000238.

25 <sup>314</sup> Tr. at 136-140; Exhs. S-1, S-10 at ACC004614-ACC004665, S-28.

26 <sup>315</sup> Tr. at 183-186; Exh. S-18.

27 <sup>316</sup> Amended Notice at ¶ 78; Answer at ¶ 78; Tr. at 50-51, 107-108, 127-128, 214, 249, 265; Exh. S-30.

28 <sup>317</sup> Tr. at 42, 49, 84, 118-119, 144-145, 167, 171, 185, 188, 206-207, 221-222, 224-225, 228, 240, 247, 258, 283; Exhs. S-10, S-11, S-26, S-27, S-28, S-29.

<sup>318</sup> Tr. at 56; Exh. S-8.

<sup>319</sup> Exh. S-8.

<sup>320</sup> Exh. S-8.

1 the AAG Agreements:

- 2 • Immediately after Ms. Donnellan invested \$33,500, AAG wired the \$33,500 to Mr.  
3 Diaz who used the funds on personal expenses.<sup>321</sup>
- 4 • Within a week of Loss Mitigation Experts, LLC, having invested, Mr. Bohlke and  
5 AAG spent nearly all of the investment proceeds on checks to Mr. Bohlke, AAG  
6 Investors, and others, as well as personal expenses including those incurred at a  
7 dentist, at a chiropractor, and at a gym.<sup>322</sup>
- 8 • Of \$182,000 in deposits to the AAG account between July 10 and August 24, 2009,  
9 of which \$176,000 were investment proceeds, AAG paid \$59,450 to Messrs. Bohlke  
10 and Diaz, \$24,830 to non-investor AAG members, and spent much of the remainder  
11 on personal expenses such as clothing, rent, furniture, groceries, restaurants,  
12 Arizona Diamondbacks purchases, and dermatologist fees.<sup>323</sup>
- 13 • Of \$404,777 in deposits to the AAG account between June 1 and November 20,  
14 2009, of which \$331,000 were investment proceeds, AAG paid \$91,370 to Messrs.  
15 Bohlke and Diaz, \$37,200 to non-investor AAG members, and spent much of the  
16 remainder on personal expenses such as rent, pregnancy expenses, tutoring costs,  
17 furniture, groceries for Mr. Bohlke's wife at the time, and payments to a car  
18 dealership.<sup>324</sup>
- 19 • Immediately after Ms. Becher's investment, AAG wired \$3,000 of the investment  
20 proceeds to a colleague who referred her to AAG.<sup>325</sup>

21 The Division argues that throughout AAG's operations in 2009, Mr. Bohlke and AAG used  
22 AAG Investors' funds in a manner that was entirely inconsistent with the statements and documents  
23 given to the investors. The Division contends that this pattern of misuse of investment funds violated  
24 A.R.S. § 44-1991(A)(2).

25 . . .

26 <sup>321</sup> Tr. at 141-145; Exhs. S-10 at ACC004636, ACC004641, S-29.

27 <sup>322</sup> Tr. at 129-132; Exhs. S-10 at ACC004663-ACC004665, S-26.

<sup>323</sup> Tr. at 132-135; Exhs. S-1, S-10 at ACC004622-ACC004643, S-27.

<sup>324</sup> Tr. at 136-140; Exhs. S-1, S-10 at ACC004614-ACC004665, S-28.

28 <sup>325</sup> Tr. at 83-86; Exhs. S-10 at ACC004636, ACC004641, S-12 at ACC009026.



1                   5. Analysis and Conclusion

2           The evidence of record establishes that Mr. Bohlke and AAG made four types of  
3 misrepresentations to the AAG Investors as alleged by the Division. These misrepresentations  
4 constitute violations of A.R.S. § 44-1991(A)(2) if the untrue statements or misleading omissions are of  
5 material facts.

6           AAG Investors were falsely told that they would be investing in real estate through Westward,  
7 that their funds would be used for operations, and that the investments were guaranteed and carried  
8 little to no risk. We find the use of investment funds and the risk associated with the investment would  
9 constitute significant factors in the deliberations of a reasonable purchaser of the AAG investment. As  
10 such, we find these misrepresentations by Mr. Bohlke and AAG constitute violations of A.R.S. § 44-  
11 1991(A)(2).

12           Promotional materials given to the AAG Investors stated Mr. Stephen Kohner's involvement  
13 in, and management of, real estate investments valued at over \$1 billion. We find these statements  
14 regarding Mr. Stephen Kohner were used to generate confidence in the AAG investment. That Mr.  
15 Stephen Kohner was a defendant in two real estate lawsuits was information that would have tarnished  
16 the successful image portrayed of him and diminished investor confidence. Mr. Bohlke and AAG had  
17 an affirmative duty to disclose this information about Mr. Stephen Kohner. We find the omission of  
18 information regarding the lawsuits against Mr. Stephen Kohner constituted the omission of a material  
19 fact that rendered the statements about Mr. Stephen Kohner misleading, and, therefore, violated A.R.S.  
20 § 44-1991(A)(2).

21                   F. Control Person Liability

22           Under A.R.S. § 44-1999(B), "Every person who, directly or indirectly, controls any person  
23 liable for a violation of section 44-1991 or 44-1992 is liable jointly and severally with and to the same  
24 extent as the controlled person to any person to whom the controlled person is liable unless the  
25 controlling person acted in good faith and did not directly or indirectly induce the act underlying the  
26 action." For the purposes of A.R.S. § 44-1999(B), a person may include an individual, corporation or  
27  
28

1 limited liability company.<sup>326</sup> In *E. Vanguard Forex, Ltd. v. Arizona Corp. Comm'n*, the Arizona Court  
 2 of Appeals interpreted A.R.S. § 44-1999(B) “as imposing presumptive control liability on persons who  
 3 have the *power* to directly or indirectly control the activities of those persons or entities liable as  
 4 primary violators of [A.R.S.] §§ 44-1991 and -1992.”<sup>327</sup> Therefore, to establish control “the evidence  
 5 need only show that the person targeted as a controlling person had the legal power, either individually  
 6 or as part of a control group, to control the activities of the primary violator.”<sup>328</sup>

7 The Division contends that Mr. Bohlke is liable as a control person for AAG’s violations of  
 8 A.R.S. § 44-1991. The Division argues that AAG is a member-managed limited liability company  
 9 with Mr. Bohlke having been the sole manager at all times.<sup>329</sup> The Division contends that Mr. Bohlke  
 10 acted as the CEO or president of AAG.<sup>330</sup> The Division notes that at the time of AAG’s organization,  
 11 AAG’s registered office was Mr. Bohlke’s residence.<sup>331</sup> The Division contends that Mr. Bohlke was  
 12 responsible for all decisions regarding AAG’s operations including the information disclosed to  
 13 potential investors.<sup>332</sup> The Division also notes that Mr. Bohlke controlled AAG’s finances because he  
 14 was a signor on, and wrote checks from, the AAG bank account where investor funds were deposited.<sup>333</sup>

15 As noted by the Division, the weight of the evidence established that Mr. Bohlke was a control  
 16 person for AAG. Accordingly, we find that Mr. Bohlke is liable as a control person for the antifraud  
 17 violations of AAG, pursuant to A.R.S. § 44-1999(B).

#### 18 G. Remedies

19 The Division argues that the Commission has broad authority to order respondents to remedy  
 20 violations of the Act. The Division contends that Mr. Bohlke and AAG should pay restitution and  
 21 administrative penalties for their violations of the Act. The Division also seeks the entry of a cease  
 22 and desist order against the Respondents for future violations.

23 . . .

24

25 <sup>326</sup> A.R.S. § 44-1801(17).

26 <sup>327</sup> *E. Vanguard Forex, Ltd. v. Arizona Corp. Comm'n*, 206 Ariz. 399, 412, ¶ 42 (App. 2003) (Emphasis in original).

27 <sup>328</sup> *Id.*

28 <sup>329</sup> Amended Notice at ¶¶ 11, 12; Answer at ¶¶ 11, 12; Tr. at 25-29; Exhs. S-1, S-2, S-3.

<sup>330</sup> Tr. at 157-158.

<sup>331</sup> Tr. at 26-27; Exh. S-1.

<sup>332</sup> Tr. at 28, 30, 160, 162; Exhs. S-2, S-3.

<sup>333</sup> Tr. at 65; Exhs. S-10 at ACC004604, S-12.

1                   1. Restitution

2                   The Division asserts that the AAG Investors collectively invested \$331,000 in AAG Units of  
3 which only \$25,100 has been repaid.<sup>334</sup> The Division requests that Mr. Bohlke and AAG be ordered  
4 to pay restitution in the amount of \$305,900.<sup>335</sup>

5                   The Commission has the authority to order restitution pursuant to A.R.S. § 44-2032.<sup>336</sup> Mr.  
6 Bohlke and AAG made, participated in or induced the sale of AAG Units to the AAG Investors.  
7 Accounting for the offsets of payments received by the AAG Investors, Mr. Bohlke and AAG are liable  
8 for restitution in the amount of \$305,900.

9                   2. Administrative Penalties

10                  The Division asserts that the Commission may assess an administrative penalty of up to \$5,000  
11 for each violation of the Act. The Division contends that Mr. Bohlke and AAG each committed 10  
12 violations of A.R.S. § 44-1841, 10 violations of A.R.S. § 44-1842, and 10 violations of A.R.S. § 44-  
13 1991. The Division recommends that the Commission impose the maximum amount of administrative  
14 penalties, \$150,000, against both Mr. Bohlke and AAG. The Division further argues that, pursuant to  
15 A.R.S. § 44-1999(B), Mr. Bohlke should be jointly and severally liable with AAG for that portion of  
16 AAG's administrative penalties which are imposed for violations of A.R.S. § 44-1991(A), \$50,000.

17                  Under A.R.S. § 44-2036(A), the Commission has authority to assess an administrative penalty  
18 of no more than \$5,000 for each violation committed.<sup>337</sup> The record established that Mr. Bohlke and  
19 AAG made, participated in or induced 10 unlawful sales, each in violation of A.R.S. §§ 44-1841, 44-  
20

21 <sup>334</sup> Amended Notice at ¶ 78; Answer at ¶ 78; Tr. at 50-51, 107-108, 126-128, 214, 249, 265; Exh. S-30.

22 <sup>335</sup> The Division requests that a portion of the restitution amount, \$168,000, be subject to joint and several liability with Mr.  
Diaz, pursuant to the Commission's order against him in Decision No. 77172. Division Post-Hearing Brief at 28.

23 <sup>336</sup> A.R.S. § 44-2032 provides, in pertinent part:

24                   If it appears to the commission, either on complaint or otherwise, that any person has engaged in, is engaging in  
or is about to engage in any act, practice or transaction that constitutes a violation of this chapter, or any rule or  
25 order of the commission under this chapter, the commission, in its discretion may:

26                   1. Issue an order directing such person to cease and desist from engaging in the act, practice or transaction, or  
doing any other act in furtherance of the act, practice or transaction, and to take appropriate affirmative action  
27 within a reasonable period of time, as prescribed by the commission, to correct the conditions resulting from  
the act, practice or transaction including, without limitation, a requirement to provide restitution as prescribed  
28 by rules of the commission. ...

<sup>337</sup> A.R.S. § 44-2036 provides, in pertinent part:

A. A person who, in an administrative action, is found to have violated any provision of this chapter or any rule or order of  
the commission may be assessed an administrative penalty by the commission, after a hearing, in an amount of not to exceed  
five thousand dollars for each violation.

1 1842, and 44-1991. In considering an appropriate amount for administrative penalties, we find  
 2 aggravating factors include the ongoing misuse of investor funds and the pattern of deception of the  
 3 AAG Investors regarding their investments. Mr. Bohlke and AAG have failed to argue the presence  
 4 of any mitigating factors. We find appropriate to order an administrative penalty of \$150,000 each  
 5 against Mr. Bohlke and AAG.

6 \* \* \* \* \*

7 Having considered the entire record herein and being fully advised in the premises, the  
 8 Commission finds, concludes, and orders that:

### 9 FINDINGS OF FACT

- 10 1. Respondent Troy Michael Bohlke was a resident of Arizona during all times relevant to  
 11 this matter.<sup>338</sup>
- 12 2. Mr. Bohlke has never been registered with the Commission in any capacity.<sup>339</sup>
- 13 3. Respondent AAG is a manager managed Arizona limited liability company organized  
 14 in May 2009.<sup>340</sup>
- 15 4. AAG has never been registered with the Commission in any capacity.<sup>341</sup>
- 16 5. Mr. Bohlke has been the sole manager of AAG since its organization.<sup>342</sup>
- 17 6. Mr. Bohlke acted as the CEO or president of AAG during its operation.<sup>343</sup>
- 18 7. As the manager of AAG, Mr. Bohlke was responsible for any and all decisions regarding  
 19 AAG.<sup>344</sup>
- 20 8. Mr. Bohlke was a member of AAG at all times.<sup>345</sup>
- 21 9. AAG's registered office was Mr. Bohlke's residence.<sup>346</sup>
- 22 10. AAG also maintained a physical office on High Street in Phoenix, Arizona.<sup>347</sup>

23  
 24 <sup>338</sup> Amended Notice at ¶ 10; Answer at ¶ 10; Tr. at 23, 26-27; Exh. S-1.

25 <sup>339</sup> Tr. at 24; Exh. S-6.

26 <sup>340</sup> Amended Notice at ¶ 11; Answer at ¶ 11; Tr. at 25-26; Exh. S-1.

27 <sup>341</sup> Tr. at 32-34; Exh. S-7.

28 <sup>342</sup> Amended Notice at ¶ 12; Answer at ¶ 12; Tr. at 26-29; Exhs. S-1, S-2, S-3.

<sup>343</sup> Tr. at 157-158.

<sup>344</sup> Tr. at 28, 30; Exhs. S-2, S-3.

<sup>345</sup> Tr. at 26; Exh. S-1.

<sup>346</sup> Tr. at 26-27; Exh. S-1.

<sup>347</sup> Tr. at 193-194.

11. From July 2009 through December 2009, Mr. Bohlke, Mr. Diaz, and AAG offered and sold AAG Units to the following 10 investors ("AAG Investors") in exchange for \$331,000:<sup>348</sup> Scott Barber,<sup>349</sup> Jodi Frazier,<sup>350</sup> Veronica Donnellan,<sup>351</sup> Arthur Flowers,<sup>352</sup> Matthew Kalatsky,<sup>353</sup> Paul Ladd,<sup>354</sup> Loss Mitigation Experts, LLC,<sup>355</sup> Patricia Massey-Becher,<sup>356</sup> Lisa Matykiewicz,<sup>357</sup> and Roberta Schneck.<sup>358</sup>

12. The AAG Units were not registered with the Commission as securities.<sup>359</sup>

13. The AAG Units were sold to unaccredited investors.<sup>360</sup>

14. Lisa Matykiewicz,<sup>361</sup> Veronica Donnellan,<sup>362</sup> Jodi Frazier,<sup>363</sup> Arthur Flowers,<sup>364</sup> and Roberta Schneck<sup>365</sup> were clients of Mr. Diaz at Merrill Lynch whom Mr. Diaz solicited or referred to Mr. Bohlke and AAG.<sup>366</sup>

15. At least two AAG Investors met with Mr. Bohlke at AAG's Phoenix office regarding the investment.<sup>367</sup>

16. During the offering, at least six AAG Investors were told by Mr. Bohlke, Mr. Diaz, and/or AAG that the investment proceeds would be used to invest in real estate through a real estate business called "The Westward Fund."<sup>368</sup>

<sup>348</sup> Tr. at 126-128; Exh. S-30.

<sup>349</sup> Tr. at 67-69, 71-72, 109-110, 126-127, 180-181; Exhs. S-17, S-22 at ACC000121, S-30.

<sup>350</sup> Tr. at 67-69, 103-104, 109-110, 126-127, 180-181, 256; Exhs. S-8 at ACC000306-ACC000310, S-17, S-22 at ACC000121, S-30.

<sup>351</sup> Tr. at 60-63, 67-69, 72-73, 126-127; Exhs. S-10 at ACC004636, S-12 at ACC009027, S-16, S-30.

<sup>352</sup> Tr. at 67-69, 104-107, 109-110, 126-127, 180-181, 203-204, 213; Exhs. S-17, S-22 at ACC000121, S-25, S-30.

<sup>353</sup> Tr. at 67-69, 73-75, 109-110, 126-127, 180-181; Exhs. S-8, S-12 at ACC009028; S-17, S-22 at ACC000121, S-30.

<sup>354</sup> Tr. at 78-82, 126-127; Exhs. S-10 at ACC004648, S-12 at ACC008937-ACC008938, S-30.

<sup>355</sup> Tr. at 67-69, 109-110, 126-127, 180-181, 276, 281, 285; Exhs. S-8, S-17, S-22 at ACC000121, S-30.

<sup>356</sup> Tr. at 67-69, 82-86, 109-110, 126-127, 180-181; Exhs. S-8 at ACCB000043-ACCB000047, S-10 at ACC004636, S-12 at ACC009026, S-17, S-22 at ACC000121, S-30.

<sup>357</sup> Tr. at 48-50, 52-55, 67-69, 103-104, 109-110, 126-127, 180-181; Exhs. S-15 at ArizCC521-ArizCC524, ArizCC533-ArizCC536, S-17, S-30.

<sup>358</sup> Tr. at 67-69, 109-110, 126-127, 180-181, 239; Exhs. S-8, S-17, S-22 at ACC000121, S-30.

<sup>359</sup> Tr. at 32-33; Exh. S-7.

<sup>360</sup> Tr. at 49, 209-210, 226, 251, 255, 271, 277-279.

<sup>361</sup> Tr. at 48, 54; Exh. S-15 at ArizCC523-ArizCC524.

<sup>362</sup> Tr. at 61.

<sup>363</sup> Tr. at 255-256.

<sup>364</sup> Tr. at 105, 203.

<sup>365</sup> Tr. at 239-240.

<sup>366</sup> Amended Notice at ¶ 55; Answer at ¶ 55.

<sup>367</sup> Tr. at 50, 193-194, 266-267.

<sup>368</sup> Tr. at 49, 84, 118-119, 167, 171, 206-207, 221-222, 224-225, 228, 240, 247, 258, 283; Exh. S-11.



1           17.     Westward Fund I, LLC ("Westward"), was a Delaware limited liability company  
2 organized in May 2009 with the intention of operating as a real estate investment business.<sup>369</sup>

3           18.     Westward was formed by SAK Financial, LLC, an Arizona limited liability company  
4 doing business as Equity Capital Group.<sup>370</sup>

5           19.     Westward contracted with Niche Focus Group, LLC ("NFG"), a marketing company  
6 organized and operated by Mr. Bohlke to create promotional materials and a website.<sup>371</sup>

7           20.     Westward also entered into an agreement with AAG whereby AAG would receive 7.5  
8 percent of any investments in Westward that AAG originated.<sup>372</sup>

9           21.     The promotional materials created by NFG for Westward included a brochure  
10 ("Brochure"), a Frequently Asked Questions document ("FAQ Document") and an Understanding the  
11 Fund document ("Understanding Document") which Mr. Bohlke or other agents of AAG gave to at  
12 least five AAG Investors prior to their investments.<sup>373</sup>

13           22.     Mr. Bohlke determined what information was provided in the Brochure.<sup>374</sup>

14           23.     The Brochure stated that Westward would take advantage of real estate opportunities  
15 during the market downturn by purchasing real estate assets at low prices and then selling those assets  
16 for a profit.<sup>375</sup>

17           24.     The Brochure also stated that Westward would be managed by Equity Capital Group,  
18 and that Stephen Kohner was the principal owner and manager of Equity Capital Group.<sup>376</sup>

19           25.     The Brochure stated that "[o]ver a 25 year career, [Stephen Kohner] has been  
20 successfully involved in more than \$1.5 billion real estate ventures, [sic] and currently manages  
21 projects in the U.S. southwest with an estimated completion value of over \$1 billion."<sup>377</sup>

22           26.     The Understanding Document identified Mr. Stephen Kohner as the principal owner of  
23

24 <sup>369</sup> Amended Notice at ¶ 57; Answer at ¶ 57; Tr. at 34-36; Exh. S-5a.

25 <sup>370</sup> Tr. at 36, 41-42; Exhs. S-5a, S-15 at ArizCC574.

26 <sup>371</sup> Amended Notice at ¶ 58; Answer at ¶ 58; Tr. at 40-42, 44, 155-156; Exhs. S-9, S-11.

27 <sup>372</sup> Tr. at 41, 59; Exhs. S-11, S-15 at ArizCC578-ArizCC579.

28 <sup>373</sup> Amended Notice at ¶¶ 65-66; Answer at ¶¶ 65-66; Tr. at 44, 52, 100-101, 162-164, 198, 206, 244, 292; Exhs. S-9, S-15 at ArizCC525-ArizCC532, ArizCC537-ArizCC567, S-23, S-24 at ACC000392-ACC000407.

<sup>374</sup> Tr. at 164-165.

<sup>375</sup> Amended Notice at ¶ 61; Answer at ¶ 61; Exh. S-9 at ArizCC525, ArizCC529.

<sup>376</sup> Amended Notice at ¶ 63; Answer at ¶ 63; Tr. at 45; Exh. S-9 at ArizCC526.

<sup>377</sup> Amended Notice at ¶ 64; Answer at ¶ 64; Tr. at 46; Exh. S-9 at ArizCC529.

1 Equity Capital Group and stated that he has “been involved in over \$1.5 billion in real estate ventures  
2 and currently has in excess of \$1 billion in development.”<sup>378</sup>

3 27. The FAQ Document described Mr. Stephen Kohner as “incredibly successful.”<sup>379</sup>

4 28. AAG sent at least one AAG Investor additional biographical materials regarding Mr.  
5 Stephen Kohner that highlighted his successes in real estate.<sup>380</sup>

6 29. In October 2007, a lawsuit (“2007 Lawsuit”) was filed against Mr. Stephen Kohner and  
7 others seeking millions of dollars in damages for fraud allegedly committed by Mr. Stephen Kohner  
8 and another defendant in connection with a real estate acquisition.<sup>381</sup>

9 30. The 2007 Lawsuit was still pending during 2009.<sup>382</sup>

10 31. In April 2009, M&I Marshall and Ilsley Bank filed a mortgage deficiency action (“2009  
11 Lawsuit”) against Mr. Stephen Kohner alleging that he defaulted on his mortgage loan.<sup>383</sup>

12 32. The 2009 Lawsuit was later settled.<sup>384</sup>

13 33. Mr. Bohlke and AAG omitted to disclose the 2007 Lawsuit and the 2009 Lawsuit to the  
14 AAG Investors.<sup>385</sup>

15 34. At least four AAG Investors were told that their returns were guaranteed or that there  
16 was little to no risk associated with investing in AAG.<sup>386</sup>

17 35. Mr. Bohlke was responsible for determining what information was provided to potential  
18 investors.<sup>387</sup>

19 36. Mr. Bohlke, Mr. Diaz, or AAG provided a document, titled “Arizona Acquisitions  
20 Group, LLC – Investment Opportunity – Terms of Agreement” (“AAG Agreement”), to most or all of  
21 the AAG Investors prior to investing and to three other potential investors.<sup>388</sup>

23 <sup>378</sup> Amended Notice at ¶ 65; Answer at ¶ 65; Tr. at 46-47; Exh. S-9 at ArizCC539.

24 <sup>379</sup> Amended Notice at ¶ 66; Answer at ¶ 66; Tr. at 47; Exh. S-9 at ArizCC544.

25 <sup>380</sup> Tr. at 101-102, 267; Exh. S-23 at ACC000139-ACC000141.

26 <sup>381</sup> Tr. at 37-38; Exh. S-13 at ¶¶ 12, 48, 55.

27 <sup>382</sup> Tr. at 38.

28 <sup>383</sup> Tr. at 39-40; Exh. S-14 at ¶¶ 2, 9, 22.

<sup>384</sup> Tr. at 86.

<sup>385</sup> Tr. at 48, 169-170, 208, 248, 261, 293; Exh. S-9.

<sup>386</sup> Tr. at 84, 112-113, 115, 183-186, 210, 241-242, 258-259; Exhs. S-18, S-22 at ACC000238.

<sup>387</sup> Tr. at 160, 162.

<sup>388</sup> Amended Notice at ¶ 70; Answer at ¶ 70; Tr. at 87-98, 161-162, 209, 245-246, 259-260, 282-283; Exhs. S-8, S-19 at ACC000047-ACC000049, S-20, S-21, S-24 at ACC000378-ACC000382.

37. Pursuant to the AAG Agreement, an investor would receive membership units in exchange for his or her investment, generally priced at \$15,000 per unit.<sup>389</sup>

38. The AAG Agreement provided that the AAG Investors would receive a cash payment 180 days from the investment date.<sup>390</sup>

39. AAG represented to potential investors that the investment would be "highly lucrative."<sup>391</sup>

40. The AAG Agreements received by the AAG Investors provided examples in which the cash returns to investors were more than three times the investment principal.<sup>392</sup>

41. One AAG Investor was told that she would receive a 100 percent return,<sup>393</sup> and at least three other AAG Investors were told that they should expect returns of more than three times their investments.<sup>394</sup>

42. The AAG Agreements provided that 100 percent of investor funds would be applied to "operations."<sup>395</sup>

43. The AAG Agreements were signed by Mr. Bohlke on behalf of AAG.<sup>396</sup>

44. The AAG Investors were solely passive investors and had no authority, responsibilities, or duties with respect to AAG.<sup>397</sup>

45. The AAG Investors believed that their investments would be combined with money from other investors.<sup>398</sup>

46. The investment proceeds were generally deposited in AAG's bank account at Chase Bank.<sup>399</sup>

47. The authorized signers for the AAG bank account were Mr. Bohlke and AAG employee

<sup>389</sup> Amended Notice at ¶ 71; Answer at ¶ 71; Tr. at 55-56, 64, 83, 84, 98, 172-173, 204-205; Exhs. S-15 at ArizCC533, S-16.

<sup>390</sup> See, e.g. Tr. at 55-56; Exh. S-15 at ArizCC533.

<sup>391</sup> Tr. at 100; Exhs. S-20 at ACC000068, S-23 at ACC000129.

<sup>392</sup> Amended Notice at ¶ 73; Answer at ¶ 73; Tr. at 55; Exh. S-15 at ArizCC533.

<sup>393</sup> Tr. at 263.

<sup>394</sup> Tr. at 84, 205, 273.

<sup>395</sup> See, e.g. Tr. at 56; Exh. S-15 at ArizCC535.

<sup>396</sup> See, e.g. Tr. at 57; Exh. S-15 at ArizCC535.

<sup>397</sup> Amended Notice at ¶ 74; Answer at ¶ 74; Tr. at 84, 205, 242, 257, 289.

<sup>398</sup> Tr. at 210-211, 242, 279.

<sup>399</sup> Exhs. S-10, S-26, S-27, S-28, S-29.

1 Bonni Howard.<sup>400</sup>

2 48. Mr. Bohlke and AAG misappropriated certain funds invested by the AAG investors.<sup>401</sup>

3 49. Immediately after Ms. Donnellan invested \$33,500, AAG wired the \$33,500 to Mr. Diaz  
4 who used the funds on personal expenses.<sup>402</sup>

5 50. Within a week of Loss Mitigation Experts, LLC, having invested, Mr. Bohlke and AAG  
6 spent nearly all of the investment proceeds on checks to Mr. Bohlke, AAG Investors, and others, as  
7 well as personal expenses including those incurred at a dentist, at a chiropractor, and at a gym.<sup>403</sup>

8 51. Of \$182,000 in deposits to the AAG account between July 10 and August 24, 2009, of  
9 which \$176,000 were investment proceeds, AAG paid \$59,450 to Messrs. Bohlke and Diaz, \$24,830  
10 to non-investor AAG members, and spent much of the remainder on personal expenses such as  
11 clothing, rent, furniture, groceries, restaurants, Arizona Diamondbacks purchases, and dermatologist  
12 fees.<sup>404</sup>

13 52. Of \$404,777 in deposits to the AAG account between June 1 and November 20, 2009,  
14 of which \$331,000 were investment proceeds, AAG paid \$91,370 to Messrs. Bohlke and Diaz, \$37,200  
15 to non-investor AAG members, and spent much of the remainder on personal expenses such as rent,  
16 pregnancy expenses, tutoring costs, furniture, groceries for Mr. Bohlke's wife at the time, and payments  
17 to a car dealership.<sup>405</sup>

18 53. Immediately after Ms. Becher's investment, AAG wired \$3,000 of the investment  
19 proceeds to a colleague who referred her to AAG.<sup>406</sup>

20 54. None of the investment proceeds were invested in the Westward Fund or used to  
21 purchase real estate.<sup>407</sup>

22 55. Mr. Bohlke also planned to misappropriate the \$65,000 proceeds from one potential  
23 investor by disbursing the entirety of the proceeds to NFG, Mr. Diaz, and a prior investor.<sup>408</sup>

24 <sup>400</sup> Tr. at 65; Exh. S-10 at ACC004604.

25 <sup>401</sup> Tr. at 111-112, 114, 125-140, 175-180, 183-185, 188; Exhs. S-18, S-22 at ACC000237, S-26, S-27, S-28.

26 <sup>402</sup> Tr. at 141-145; Exhs. S-10 at ACC004636, ACC004641, S-29.

26 <sup>403</sup> Tr. at 129-132; Exhs. S-10 at ACC004663-ACC004665, S-26.

26 <sup>404</sup> Tr. at 132-135; Exhs. S-1, S-10 at ACC004622-ACC004643, S-27.

27 <sup>405</sup> Tr. at 136-140; Exhs. S-1, S-10 at ACC004614-ACC004665, S-28.

27 <sup>406</sup> Tr. at 83-86; Exhs. S-10 at ACC004636, ACC004641, S-12 at ACC009026.

28 <sup>407</sup> Tr. at 42, 144-145, 185, 188; Exhs. S-10, S-26, S-27, S-28, S-29.

28 <sup>408</sup> Tr. at 98-99, 173-175; Exh. S-21.

56. Three AAG Investors received payments totaling \$10,100, one AAG Investor received a settlement exceeding the \$15,000 investment principal through a settlement agreement with a third party, and the remaining AAG Investors received no returns.<sup>409</sup>

57. Westward was cancelled under Delaware law on January 12, 2010.<sup>410</sup>

58. AAG was administratively dissolved in September 2013.<sup>411</sup>

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801, *et. seq.*

2. The findings contained in the Discussion above are incorporated herein.

3. Within or from Arizona, Respondents Troy Michael Bohlke and AAG made, participated in or induced the offer and sale of securities, within the meaning of A.R.S. § 44-1801.

4. Respondents Troy Michael Bohlke and AAG failed to meet their burden of proof pursuant to A.R.S. § 44-2033 to establish that the securities offered and sold herein were exempt from regulation under the Securities Act.

5. Respondents Troy Michael Bohlke and AAG violated A.R.S. § 44-1841 by having made, participated in or induced the offer and sale of securities that were neither registered nor exempt from registration.

6. Respondents Troy Michael Bohlke and AAG violated A.R.S. § 44-1842 by having made, participated in or induced the offer and sale of securities while not being registered as dealers or salesmen.

7. Respondents Troy Michael Bohlke and AAG committed fraud by having made, participated in or induced the offer and sale of securities, in violation of A.R.S. § 44-1991, in the manner set forth hereinabove.

8. Respondent Troy Michael Bohlke directly or indirectly controlled AAG, within the meaning of A.R.S. § 44-1999, and he is jointly and severally liable with AAG, for violations of A.R.S. § 44-1991.

<sup>409</sup> Amended Notice at ¶ 78; Answer at ¶ 78; Tr. at 50-51, 107-108, 127-128, 214, 249, 265; Exh. S-30.

<sup>410</sup> Tr. at 119-120; Exhs. S-5b, S-11.

<sup>411</sup> Amended Notice at ¶ 13; Answer at ¶ 13; Tr. at 31; Exh. S-4.



1           9.       Respondents Troy Michael Bohlke's and AAG's conduct is grounds for a cease and  
2 desist order pursuant to A.R.S. § 44-2032.

3           10.       Respondents Troy Michael Bohlke's and AAG's conduct is grounds for an order of  
4 restitution pursuant to A.R.S. § 44-2032 and A.A.C. R14-4-308.

5           11.       Respondents Troy Michael Bohlke's and AAG's conduct is grounds to order  
6 administrative penalties pursuant to A.R.S. § 44-2036.

7                               **ORDER**

8           IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under  
9 A.R.S. § 44-2032, Respondents Troy Michael Bohlke and AAG shall cease and desist from their  
10 actions, as described above, in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

11          IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
12 A.R.S. § 44-2032, Respondents Troy Michael Bohlke and AAG, jointly and severally, shall make  
13 restitution in the amount of \$137,900, payable to the Arizona Corporation Commission within 90 days  
14 of the effective date of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308  
15 subject to legal setoffs by the Respondents and confirmed by the Director of Securities.

16          IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
17 A.R.S. § 44-2032, Respondents Troy Michael Bohlke and AAG, jointly and severally, shall make  
18 restitution in the amount of \$168,000, jointly and severally with Respondent Jeremy Vincent Diaz,  
19 pursuant to Decision No. 77172, payable to the Arizona Corporation Commission within 90 days of  
20 the effective date of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308 subject  
21 to legal setoffs by the Respondent and confirmed by the Director of Securities.

22          IT IS FURTHER ORDERED that all ordered restitution payments shall be deposited into an  
23 interest-bearing account(s), if appropriate, until distributions are made.

24          IT IS FURTHER ORDERED that the ordered restitution shall bear interest at the rate of the  
25 lesser of 10 percent *per annum*, or at a rate *per annum* that is equal to one percent plus the prime rate  
26 as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15, or  
27 any publication that may supersede it on the date that the judgment is entered.

28          IT IS FURTHER ORDERED that the Commission shall disburse the restitution funds on a *pro*

1 *rata* basis to the investors shown on the records of the Commission. Any restitution funds that the  
2 Commission cannot disburse to an investor because the investor is deceased or an entity which invested  
3 is dissolved, shall be disbursed on a *pro rata* basis to the remaining investors shown on the records of  
4 the Commission. Any remaining funds that the Commission determines it is unable to or cannot  
5 feasibly disburse shall be transferred to the general fund of the State of Arizona.

6 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
7 A.R.S. § 44-2036, Respondent AAG shall pay to the State of Arizona administrative penalties in the  
8 amount of \$150,000, of which \$50,000 is for violations of A.R.S. § 44-1991, as a result of the conduct  
9 set forth in the Findings of Fact and Conclusions of Law.

10 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
11 A.R.S. § 44-2036, Respondent Troy Michael Bohlke shall pay to the State of Arizona administrative  
12 penalties in the amount of \$150,000 as a result of the conduct set forth in the Findings of Fact and  
13 Conclusions of Law. Respondent Troy Michael Bohlke shall also pay jointly and severally with AAG  
14 its administrative penalty of \$50,000 for violations of A.R.S. § 44-1991, pursuant to A.R.S. § 44-  
15 1999(B).

16 IT IS FURTHER ORDERED that all administrative penalties shall be payable by either  
17 cashier's check or money order payable to "the State of Arizona" and presented to the Arizona  
18 Corporation Commission for deposit in the general fund for the State of Arizona.

19 IT IS FURTHER ORDERED that the payment obligations for these administrative penalties  
20 shall be subordinate to the restitution obligations ordered herein and shall become immediately due and  
21 payable only after restitution payments have been paid in full or upon Respondents' default with respect  
22 to Respondents' restitution obligations.

23 IT IS FURTHER ORDERED that if Respondents fail to pay the administrative penalties  
24 ordered hereinabove, any outstanding balance plus interest, at the rate of the lesser of ten percent *per*  
25 *annum* or at a rate *per annum* that is equal to one percent plus the prime rate as published by the Board  
26 of Governors of the Federal Reserve System in Statistical Release H.15 or any publication that may  
27 supersede it on the date that the judgment is entered, may be deemed in default and shall be immediately  
28 due and payable, without further notice.

1 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, any  
2 outstanding balance shall be in default and shall be immediately due and payable without notice or  
3 demand. The acceptance of any partial or late payment by the Commission is not a waiver of default  
4 by the Commission.

5 IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission  
6 for its cost of collection and interest at the maximum legal rate.

7 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, the  
8 Commission may bring further legal proceedings against the Respondent(s) including application to  
9 the Superior Court for an order of contempt.

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IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application the Commission may grant a rehearing of this Order. The application must be received by the Commission at its offices within twenty (20) calendar days after entry of this Order. Unless otherwise ordered, filing an application for rehearing does not stay this Order. If the Commission does not grant a rehearing within twenty (20) calendar days after filing the application, the application is considered to be denied. No additional notice will be given of such denial.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

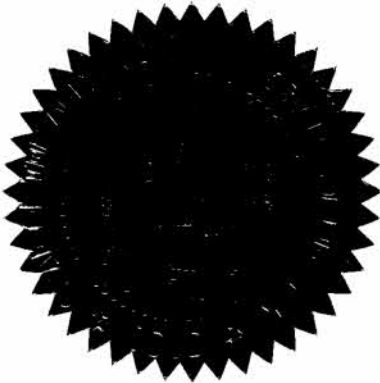
*Lea Marquez Peterson*  
CHAIRWOMAN MARQUEZ PETERSON

*Daniel D. Kennedy*  
COMMISSIONER KENNEDY

*Justin Olson*  
COMMISSIONER OLSON

*Anna Toivas*  
COMMISSIONER TOIVAS

*James P. O'Connor*  
COMMISSIONER O'CONNOR



IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 5 day of May 2021.

*myl*  
MATTHEW J. NEUBERT  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
MP/ec

1 SERVICE LIST FOR:

JEREMY VINCENT DIAZ, TROY MICHAEL  
BOHLKE, IDIAZ, LLC, WEALTH CREATOR  
PRIVATE EQUITY, LLC, AND ARIZONA  
ACQUISITIONS GROUP, LLC

3 DOCKET NO.:

S-20983A-16-0299

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13 Jeremy Vincent Diaz  
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**and**  
15 P.O. Box 701368  
16 San Antonio, TX 78270  
17 *Respondent and Manager of*  
18 *Respondents IDIAZ, LLC and*  
*Wealth Creator Private Equity, LLC*

19 Mark Dinell, Director  
Securities Division  
20 ARIZONA CORPORATION COMMISSION  
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22 **Consented to Service by Email**